1300 PROCEDURAL SAFEGUARDS

Procedural safeguards establish and define the process by which infants and toddlers with disabilities and their families will be assured of their rights under the IDEA Part C and the Oklahoma Early Intervention Act. Procedural safeguards are the checks and balances of the system, not a piece separate from the system.

All SoonerStart personnel share responsibility for the implementation of procedural safeguards as outlined in the *Parent Rights for SoonerStart Services-Notice of Procedural Safeguards* manual.

The manual is presented during early contacts (screening or eligibility evaluation) with the family by the service coordinator or service provider. An explanation of the following sections should be sufficient in detail to provide the family with a thorough understanding of procedural safeguards:

- Parental Consent
- Confidentiality
- Parent's Right to Examine Records
- Notice of Meeting
- Prior Written Notice
- Fee for Records
- Dispute Resolution Options

For additional information, the family can be provided a copy of SoonerStart Early Intervention Policies 2012 or referred to the online version http://ok.gov/sde/sites/ok.gov.sde/files/SpecEd-DraftSSPolicies.pdf.

If the child is eligible for early intervention services and an IFSP is completed, the *Parent Rights for SoonerStart Services – Notice of Procedural Safeguards* manual is presented to the family at each subsequent annual IFSP meeting; if a parent files a due process or formal written complaint; or any time the parent requests a copy.

Parental Consent

Parental Consent must be obtained in writing before the eligibility evaluation can be conducted. If a child is determined eligible, and an IFSP is developed, written parental consent is required before services can be initiated. The service coordinator is responsible for completing and obtaining parental signature(s) on the *Consent for Initial Evaluation/Assessment and Prior Written Notice* form **(Appendix F**) and the IFSP service delivery page **(Appendix P).**

Parental Consent must be obtained in writing before an evaluation to determine *continued* eligibility is conducted. The service coordinator is responsible for completing and obtaining parental signature(s) on the *Consent for Re-Evaluate and Prior Written Notice* form (**Appendix G)** and also responsible for explaining the criteria for continued eligibility; the possibility that early intervention services may be discontinued if the child no longer meets eligibility criteria; and that the parent can

decline to give written consent for the re-evaluation. If the family refuses to consent to the re-evaluation, the IFSP team must meet to review outcomes and possibly modify services.

Parental Consent must be obtained in writing before SoonerStart can request records from, or provide records to, medical professionals; educational agencies or program; or any party outside of the early intervention program.

Confidentiality

SoonerStart must ensure that the confidentiality of personally identifiable information is protected at collection, storage, disclosure, and destruction stages. All personnel collecting or using personally identifiable information must receive training regarding SoonerStart Policies and Procedures.

The SoonerStart Regional Early Intervention Coordinator (REIC) must maintain for public inspection the names of individuals who have access to personally identifiable information.

The service coordinator is responsible for explaining that the Part C federal regulations require that SoonerStart disclose a child's name, date of birth, and parent contact information (including parents' names, addresses, and telephone numbers) to the local education agency (LEA) where the child resides. This disclosure is mandatory and is provided *without* parental consent as part of Child Find to identify all children potentially eligible for Part B services. [*34 CFR §303.401(d)(1)(i)(ii)(iii)* and *§303.401 (d)(2)].*

Parents' Right to Examine Records

The parents of a child receiving SoonerStart services must be afforded the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family.

If the parent believes the information is inaccurate, misleading or violates the privacy or rights of the child/family, the parent may request that the record be amended. The REIC will determine the personnel to be involved in reviewing the request to amend the record. If SoonerStart makes the desired changes, or refuses to change the record, the REIC will provide Prior Written Notice to the parents.

Notice to Parents

SoonerStart must inform parents that an "early intervention record" is created and may be maintained in print, video, audio and or computer media format. The early intervention record contains personally identifiable information directly related to the child and his or her family.

This information includes:

- *The child's name, address and date of birth*
- *The parents' contact information including parents' names, addresses and telephone numbers*

- *The child's social security number or other child specific number*
- *A list of personal characteristics or any other information that clearly distinguishes the child's identity*

Parents must receive a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods used to gather information, and the uses to be made of the information.

The early intervention record may contain information provided by parents, referral sources, physicians (if applicable), developmental screenings, evaluations and assessments; and SoonerStart staff which includes:

- Intake – referral forms, initial home visit documents
- Progress notes
- Parent contact reports
- Incoming and copies of outgoing correspondence
- Individualized Family service Plan (IFSP) and reviews
- Evaluation – Multidisciplinary Evaluation Team Summary and testing protocols
- Medical – medical records, prescriptions
- Forms – consents, notifications, written notice, releases of information
- Medicaid billing (if applicable)

Information maintained in the record is utilized to determine eligibility and develop program planning for infants and toddlers with disabilities in the SoonerStart program.

Parents must be given notice of the SoonerStart procedures regarding the confidential storage, retention, and destruction of the child's early intervention records in their native language, unless clearly not feasible to do so.

A SoonerStart record is maintained at the local SoonerStart site office in an ***active*** or ***inactive*** file until the child's third birthday at which time it is transferred to a ***closed*** file. When a child's file is transferred to a closed file, it is retained at the local SoonerStart site office for a period of one (1) year after the third birthday and is then transferred to the local county health department in the child's county of residence. The closed record is maintained in accordance with Records Disposition Schedule 2003-05N, Series 1-13A, but is eligible for destruction when it is seven (7) years old provided all audits have been completed and all applicable audit reports have been accepted and resolved by all applicable federal and state agencies, and provided no legal actions are pending. If legal action is pending, the record may be destroyed two (2) years after of all legal remedies are completed provided the record meets all stipulated retention requirements. All **active, inactive** and **closed** SoonerStart records are maintained in a confidential manner until destruction.

Prior Written Notice

Prior Written Notice (PWN) serves as the basis for formal notification to the family regarding their right to agree or disagree with early intervention service decisions made by the SoonerStart team. Prior Written Notice must be provided to parents prior to the proposal or refusal of initiation or change of identification, evaluation, placement or provision of appropriate early intervention services.

Prior Written Notice must include sufficient detail of the action being proposed or refused, the reason for the proposed action, procedural safeguards available, and state complaint procedures, including how to file a complaint. The notice must be provided in the parent's native language unless clearly not feasible to do so.

Fees for Records

A copy of each evaluation, assessment of the child, family assessment and IFSP must be provided at ***no cost*** to the family as soon as possible after each IFSP meeting. SoonerStart may charge a fee for copies of records that are made for parents if the fee does not effectively prevent the parents from exercising their right to inspect and review records. SoonerStart may charge a fee for copies of records that are made for third parties (i.e. attorneys if records are subpoenaed), if the requesting party has written consent from the parent to receive early intervention records. Fees are charged at the discretion of the local SoonerStart site and are reasonable and customary charges set by the Oklahoma State Department of Health.

System of Payments and Fees

If a State elects to adopt a system of payments, policies must be in writing and specify which functions or services, if any, are subject to the system of payments (including any fees charged to the family as a result of using one or more of the family's public insurance or benefits or private insurance).

A parent who wishes to contest the imposition of a fee, or the State's determination of the parent's ability to pay, may do one of the following:

(i) Participate in mediation.
(ii) Request a due process hearing.
(iii) File a State complaint.
(iv) Use any other procedure established by the State for speedy resolution of financial claims, provided that such use does not delay or deny the parent's procedural rights.

The Individuals with Disabilities Education Act (IDEA) requires that Part C programs be the payor of last resort and requires that Part C funds only be used for Early Intervention Services that an eligible child needs but is not currently entitled to under any other Federal, state, local or private sources.

Dispute Resolution Options

Every effort should be made to resolve disagreements using informal decision making. However, there may come a time during provision of early intervention services when a dispute or complaint arises. Parties who can report complaints include parent(s), surrogate parent(s), legal guardian(s), individual(s), organization(s), and public or private Part C personnel acting on behalf of the State.

The overall responsibility for administering Oklahoma's dispute resolution system is conducted by the Oklahoma State Department of Education, Division of Special Education services (OSDE-SES). OSDE-SES contracts with the Special Education Resolution Center (SERC) at Oklahoma State University to manage the required processes for dispute resolution. The three dispute resolution options available in Oklahoma are mediation, due process, and formal written complaints.

Mediation in early intervention is a process designed to assist parents and Part C agencies to resolve disputes or complaints about identification, evaluations, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the child.

Due Process procedures govern the process for resolving individual child complaints concerning identification, evaluation, or placement of the child and arising from the provision of appropriate early intervention services to the child and the child's family, under Part C of the Individuals with Disabilities Education Improvement Act 2004 (IDEA).

Formal Written Complaint procedures govern the process for receiving and resolving any written complaint that a public agency or private service provider who receives Part C funds is violating a requirement or regulations of Part C the IDEA.

It is the responsibility of all SoonerStart staff to be familiar with the SoonerStart procedural safeguards as outlined in the *Parent Rights for SoonerStart Services – Notice of Procedural Safeguards* manual as well as the SoonerStart Early Intervention Policies 2012 regarding Oklahoma's Part C dispute resolution options. The REIC should be notified within 48 hours after a family has identified a dispute and contact the family to provide additional assistance.

Additional information is found in the *SoonerStart Early Intervention Policies 2012* or the online version http://ok.gov/sde/sites/ok.gov.sde/files/SpecEd-DraftSSPolicies.pdf.

(Appendix Q)