

## 1400: PROCEDURAL SAFEGUARDS

Procedural safeguards establish and define the process by which infants and toddlers with disabilities and their families are 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 (Appendix H)** manual.

The manual is presented during early contacts (screening or eligibility evaluation) with the family by the Resource 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 and Procedures Manual - 2013** or referred to the online version:

<http://ok.gov/sde/sites/ok.gov.sde/files/2012%20SS%20POLICIES%203-11-13%20Final.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.

A one page example of explanations and implications of procedural safeguards is included in **(Appendix K)** to assist the family in understanding their rights as well as a flow chart to assist SoonerStart staff in determining when procedural safeguards explanations are necessary.

### **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 Resource Coordinator is responsible for completing and obtaining parental signature(s) on the **Consent for Initial Evaluation/Assessment and Prior Written Notice (OK-SS-Consent-Evaluation)** form and the IFSP service delivery page.

Parental Consent must be obtained in writing before an evaluation to determine *continued* eligibility is conducted. The Resource Coordinator is responsible for completing and obtaining parental signature(s) on the **Consent for Re-Evaluation and Prior Written Notice (OK-SS-Consent-Reevaluation)** form 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.

Exceptions to the requirement of parental consent for release of confidential information are:

A. the automatic referral requirements when a child is potentially eligible for preschool special education and child find information is provided using the **LEA Notification (Appendix L)(OK-SS-LEA Notice)** form.

B. exceptions listed in Family Educational Rights and Privacy Act (FERPA), 34 C.F.R. §99.31, including but not limited to:

1. When a child moves and changes early intervention providers, the early intervention records may be sent from one early intervention provider to another without the parent's consent;
2. Disclosure to comply with a judicial order or lawfully issued subpoena;
3. The disclosure is in connection with a health and safety emergency to appropriate authorities to protect the health or safety of the child or other individuals.
4. Release of education records to an agency caseworker or other representative of a State or local child welfare agency or tribal organization who has the right to access a child's case plan and when the agency or organization is legally responsible for the child's care and protection.\*

(\*effective January 2014)

### **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 Resource 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 and Child Assessment Team Summary (MECATS) 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.

The SoonerStart record consists of both electronic information and paper documents. The paper chart is maintained at the local SoonerStart site office in an **active** or **inactive** status until the child's third birthday at which time the record is closed. The child's inactive paper record is retained at the local SoonerStart site office until the child's sixth (6<sup>th</sup>) birthday. Following the child's sixth (6<sup>th</sup>) birthday, the paper record is scanned and archived digitally in the Oklahoma State Department of Health (OSDH) secured data system (PHOCIS). OSDH will retain paper records one year after scanning and then they will be destroyed. Information may be accessed from the digital record by OSDH SoonerStart Administrators if necessary. Destruction of the digital record occurs when the child is 25 years of age.

The inactive electronic record is retained indefinitely in the EdPlan database. This record includes the child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and early intervention services provider(s), exit data (including year and age upon exit), and any programs the child entered into upon exiting.

Parents may request information from their child's early intervention record by contacting the local SoonerStart office before the child's 6<sup>th</sup> birthday or the SoonerStart Program at the Oklahoma State Department of Education at 405-521-4880.

All **active**, **inactive** and **electronic** SoonerStart records are maintained in a confidential manner.

\* Inactive SoonerStart records for **Oklahoma County and Tulsa County** are stored at the local site until the child's 10<sup>th</sup> birthday and then destroyed.

### **Prior Written Notice**

**Prior Written Notice (PWN) (OK-SS Prior Written Notice)** 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. A **Parent Agreement to Mediate and Request for Mediation** form is located in **Appendix HH**.

If a parent chooses not to use the Mediation process, SoonerStart will offer the family the opportunity to meet with an impartial party such as the Oklahoma Parent Center or Special Education Resolution Center (SERC) at Oklahoma State University. The impartial party will explain the benefits of and encourage the use of Mediation.

*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** as well as the *SoonerStart Early Intervention Policies and Procedures Manual – 2013* 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 and Procedures – 2013* or the online version:

<http://ok.gov/sde/sites/ok.gov.sde/files/2012%20SS%20POLICIES%203-11-13%20Final.pdf>

A full version of the **Parent Rights for SoonerStart Services – Notice of Procedural Safeguards** can be located in **Appendix H**.