

Rhode Island Early Intervention Certification Standards

Policies and Procedures

IX. Procedural Safeguards

Certified Early Intervention providers are required to develop policies and procedures in compliance with federal regulations to ensure that families understand their rights within the Rhode Island Early Intervention system. Provider policies and procedures must minimally include the following:

Early Intervention providers must assure and document that a copy of the *Rhode Island Early Intervention Procedural Safeguards and Funding* is provided to all families at intake and annually thereafter

- Service Coordinators must review, explain and ensure each family involved in EI understands *Rhode Island Early Intervention Procedural Safeguards and Funding*.

Prior Written Notice

§303.421 Prior written notice must be provided to parents a reasonable time before the Lead Agency or an EIS provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of their infant or toddler, or the provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family.

Prior Written Notice

EI providers must notify families in writing prior to actions taken that affect their child. Prior written notice within a reasonable amount of time must be given on the following occasions:

- Prior to a Multidisciplinary Evaluation/Assessment.
- Prior to an Eligibility/IFSP meeting
- Prior to an IFSP meeting (including a transition conference) when decisions will be made to:
 - add new services,
 - change services (type, frequency, intensity or duration),
 - end services or
 - refuse to add, change, or initiate a particular service and
 - discharge a child from Early Intervention
- Prior to discharge of a family who has been unavailable.
- After an IFSP meeting when the team has made a decision about eligibility, which services to add, change, or end, or after a refusal to include or change an IFSP service. The IFSP signature page and/or the SRF IFSP/Update form provide Prior Written Notice to the initiation of the decision.

Forms that provide Prior Written Notice are:

- *Rhode Island Early Intervention Prior Written Notice and Consent Multidisciplinary Evaluation/Assessment and Eligibility/IFSP Meeting*
- *Rhode Island Early Intervention Prior Written Notice*
- *Rhode Island Early Intervention Program Services Rendered Form*
- *Rhode Island Early Intervention Program Services Rendered Form IFSP/Update*
- *Rhode Island Early Intervention IFSP signature page*
- *Rhode Island Early Intervention Discharge/Exit Services Rendered Form*

- The notice must be in the parents' native language or preferred mode of communication. If the family prefers another language or way of communicating (such as Braille or American Sign Language), the program must provide an interpreter unless it is clearly not feasible to do so. For families who do not read, the written information should be provided orally.

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- With each notice the parent/caregiver must be provided with *Understanding Procedural Safeguards*. The parent must indicate that they have been given the *Understanding Procedural Safeguards document* and that they understand these rights. If notice is provided by mail, the *Understanding Procedural Safeguards document* must be mailed with the notice.

Informed Written Consent

§303.7 Consent Consent means that—

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent’s native language, as defined in §303.25;*
- (b) The parent understands and agrees in writing to the carrying out of the activity for which the parent’s consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and*
- (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.*
- (2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).*

Informed Written Consent

EI providers must ensure that families have been fully informed (in their native language), understand and provide written consent to actions that affect their child. Parental consent is required for the following activities:

- EI providers must obtain written consent from a parent before conducting the initial/annual multidisciplinary evaluation/ assessment.
- A program must obtain written consent from a parent before initiating any services (including discipline specific evaluations and assessments) or changes in services on an IFSP. EI providers must assure families that they have the ability to accept or decline some services without impacting the provision of other services.
- A parent may withdraw his/her consent for Early Intervention services after initially providing it without jeopardizing other Early Intervention services.
- If a parent does not give consent, the program must make an effort to ensure that the parent is fully aware of the nature of the evaluation, assessment, or services that would be available, and that the parent understands the child will not be able to receive an evaluation, assessment, or services without consent.
- EI providers must obtain parental consent prior to the release of personally identifiable information necessary to bill private insurance.
- EI providers must obtain parental consent to release records with personally identifiable information (unless otherwise permitted under state or federal law).

Forms used to obtain parental consent are:

- *Health Insurance Consent to Release Information form*
- *Prior Written Notice and Consent Multidisciplinary Evaluation/Assessment form*
- *IFSP signature page*
- *Rhode Island Early Intervention Program Services Rendered Form IFSP/Update*

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Confidentiality and Release of Information

IDEA 303.401

(a) Each state must ensure that the parents referred to under this part are afforded the right to confidentiality of personally identifiable information, including the right to written notice of and written consent to the exchange of that information consistent with Federal and State Laws

b) Confidentiality procedures. As required under sections 617(c) and 642 of the Act, the regulations in §§ 303.401 through 303.417 ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to this part by the Secretary and by participating agencies, including the State Lead Agency and EIS providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR part 99.

Confidentiality and Release of Information

The Lead Agency and EI providers must ensure that information about children and families is kept confidential.

- The Lead Agency and EI providers must ensure the protection of the confidentiality of any personally identifiable information, data and records collected, used or maintained, consistent with federal and state law. This applies from the time the child is referred to early intervention until the information is no longer required to be maintained.
- Personally identifiable information includes:
 - the child’s name, address and date of birth;
 - the names of the parents and other family members;
 - a personal identifier, such as a social security number
 - indirect identifiers such as, place of birth, and mother's maiden name;
 - a list of personal characteristics that would make it possible to identify the child with reasonable certainty.
- The Lead Agency and EI providers must provide written notice and obtain prior written consent from the parent in order to obtain, release or exchange personally identifiable information concerning the child and family. This also includes the sharing of personally identifiable information verbally.
- **Prior parental consent must be obtained before personally identifiable information is disclosed to anyone other than authorized representatives, officials or employees of “participating agencies”.** A “participating agency” is any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the Act and the regulations in this part with respect to a particular child.
- The written consent must be signed by the parent, list the information that will be released, state the purpose of the disclosure, and identify the party to whom the disclosure will be made.
- The EI provider must explain to the parent that the granting of consent to obtain, release or exchange personally identifiable information may be revoked at any time by contacting their service coordinator (but cannot be revoked retroactively).
- No personally identifiable information about the child or family will be disclosed to another agency or individual without written consent from the parent or other person with legal authority to make such a release, except as follows to:
 - The parents of the child;
 - An **Early Intervention** program’s employees and contractors such as educators, therapists, supervisors, administrators,

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- secretaries, or paraprofessionals who have been determined to have legitimate interests. Legitimate interest is performing a task related to his or her job description or a service to the child or family.
 - Another Rhode Island certified Early Intervention Provider in connection with implementing Part C;
 - Authorized representatives of the United States Department of Education and the Lead Agency in connection with implementing Part C;
 - LEAs and SEA's for the purpose of notification, unless the parent "Opts out" of notification. Notification information includes the child's name, date of birth, parent contact information (including parents' names, addresses, and telephone numbers). This is done by faxing or mailing T-1 of the IFSP to the LEA. Parent consent is required to release any additional information;
 - Accrediting organizations to carry out their accrediting functions;
 - Appropriate persons, if the knowledge of such information is necessary to protect the health or safety of a child;
 - To comply with a judicial order or lawfully issued subpoena.
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- If a child is under the guardianship of the Rhode Island Department of Children Youth and Families, the child's DCYF worker can access the child's early intervention record without the consent of the child's, parent, or legal guardian.
 - If there is an active investigation of abuse or neglect. DCYF investigators will be granted access to any information in the early intervention record.
 - The Lead Agency and EI provider must protect the confidentiality of personally identifiable information during collection, maintenance, use, storage, disclosure, and destruction of records.
 - The Lead Agency and EI provider must have one official who will assume responsibility for ensuring the confidentiality of any personally identifiable information.
 - All persons collecting or using personally identifiable information must receive documented training or instruction on Rhode Island Early Intervention policies and procedures regarding consent, confidentiality, and access to records and family rights under the Family Educational Rights and Privacy Act (FERPA).
 - The Lead Agency and EI provider must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

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- EI providers notify parents when personally identifiable information collected, maintained or used is no longer needed at intake in the *Rhode Island Early Intervention Procedural Safeguards and Funding* document. Parents may request that the EI provider destroy the information when it is no longer needed. The Lead Agency and EI provider may maintain a permanent record of the child's name, date of birth, address, phone number, name(s) of service coordinator(s), exit status and date.
- The EI provider must have policies and procedures regarding record retention which ensures confidentiality of the record during storage and destruction. The EI Provider must keep the child's records for ten (10) years.

Access to Records

Access to Records

EI Providers must ensure that families have access to early intervention records regarding their child and family.

- Early Intervention records include any information, recorded in any way, maintained by an agency or Early Intervention provider.
- EI Providers must ensure that parents have the opportunity to inspect and review all early intervention records about the child and child's family that are collected, maintained, or used including evaluations and assessments, eligibility determinations, development and implementation of the IFSP, provision of early intervention services, individual complaints involving the child, and any other part of the child's early intervention record.
- EI Providers must provide parents, upon request, a list of the types and locations of early intervention records kept on their child, where they are maintained and how they can gain access to them.
- EI Providers will respond to and comply with a parent's request to inspect and review their child's early intervention records without unnecessary delay and before any meeting regarding an IFSP or due process hearing, but not more than 10 days after a request has been made.
- EI providers must make available at no cost to the parent, a copy of each evaluation, assessment of the child, family assessment, and IFSP as soon as possible after each IFSP meeting.
- EI providers may charge a fee for copies of records, but only if such a fee does not prevent the parent from inspecting and reviewing the record.
- EI providers may not charge a fee to search for or collect information.
- The family of the child has the right to have someone from the EI program explain or interpret any item in the record that the family does not understand.

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- Parents have the right to have a representative inspect and review the early intervention record.
- The EI provider may presume the parent has the authority to inspect and review records relating to their child unless the EI provider has been provided documentation that the parent does not have the authority under applicable state law governing such matters as custody, foster care, guardianship, separation and divorce.
- If a record includes information on more than one child, the parents' rights to access are restricted to the portion of the record of their own child.
- If the parent feels that any information in the record is inaccurate, or misleading, or violates the privacy or other rights of the child, he/she may request the EI provider to amend the information. The request must be documented. The EI provider must either amend the information in a reasonable period of time or formally refuse to do so.
- If the EI provider refuses to do so, the parents must be informed in writing of that refusal, be advised of the right to dispute the decision to refuse to change the record, and be advised of the right to a due process hearing to challenge information in the record to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.
- The provider will inform the parent of the right to a due process hearing and assist the parent in completing the Request for a Due Process Hearing if needed. The hearing must be in accordance with FERPA procedures.
- If, as a result of a hearing, it is determined that information in the record is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child or parent, the records will be amended accordingly, and the parents will be notified in writing.
- If, as a result of the hearing, it is determined that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parent, the parent will be informed of the right to place in the record a statement commenting on the information or reasons for disagreeing with the decision of the agency.
- Any explanation placed in the record must be maintained by the EI provider as part of the early intervention record as long as the record or contested portion is maintained by the EI provider. If the record or the contested portion is disclosed by the EI provider to any party, the explanation must also be disclosed to the party.

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- Parents also have the right to file a complaint with the U.S. Dept. of Education concerning alleged failures of compliance with FERPA.
- Each EI provider must keep a record of parties obtaining or requesting access to early intervention records collected, maintained or used. The record of access must include the name of the party, the date of access and the purpose for which the party was authorized to use the child's record.
- The record of access shall be maintained with the record as long as the record is maintained.
- Each EI provider must maintain early intervention records in locked files/storage rooms at all times in order to secure confidentiality.
- Each EI provider is responsible for ensuring compliance with the Family Educational Rights and Privacy Act FERPA and the Health Insurance Portability and Accountability Act (HIPAA).

Surrogate Parent Every child referred for an evaluation or enrolled in Early Intervention must have someone who can act on that child's behalf as a parent as defined under Part C of the IDEA

Section 303.27 of IDEA defines parent as

- (A) a biological, adoptive, or foster parent of a child (unless a foster parent is prohibited by State law from serving as a parent);*
- (B) a guardian authorized to act as the child's parent (but not the State if the child is a ward of the State);*
- (C) 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*
- (D) an individual who has been appointed under 303.422 or section 639(a)(5) to be a surrogate parent.*

- A child does not need a surrogate parent if he or she lives with someone who meets the definition of "parent."
- A child needs a surrogate parent when:
 - No parent (as defined) can be identified
 - The Lead Agency or other public agency, after reasonable efforts, cannot locate a parent; or
 - The child is a ward of the State.
- In Rhode Island, children referred to Early Intervention will usually live with someone who meets the definition of "parent". In the rare instance when a child does not live with anyone that fits the definition of parent the following methods are used:
 - Department of Children Youth and Families will assign a surrogate parent. The surrogate parent is identified on Form 175.

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- A judge who oversees the case of an infant or toddler, who is a ward of the state, can appoint a surrogate parent for that child.
- The role of a surrogate parent is to make Early Intervention decisions affecting the child, in place of the child's parent. Early intervention decisions include identification, evaluation, placement, development and periodic reviews of the Individualized Family Service Plan (IFSP) and due process procedures. A surrogate parent has access to all early intervention records concerning the child and due process rights. The surrogate parent has the same rights as a parent for all purposes under Rhode Island Early Intervention. However, surrogate parents do not have the authority to request or release medical information. The DCYF social worker signs for release of medical records.
- A person assigned as a surrogate parent
 - May not be an employee of the Lead Agency or any other public agency or EIS provider that provides early intervention services, education, care, or other services to the child or any family.
 - May not have personal or professional interest that conflicts with the interest of the child he or she represents; and
 - Must have knowledge and skills that ensure adequate representation of the child.
 - A person who is otherwise qualified to be a surrogate parent under paragraph (d) of this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.
- DCYF 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.

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Informal Complaint Procedures

Certified EI Providers must have policies and procedures for resolving informal parent complaints.

- EI providers explain at Intake how and with whom parents can address concerns or disagreements about Early Intervention with at the program level.
- EI providers offer informal opportunities to resolve a parent's concern and areas of disagreements through meetings/discussions.
- EI providers work collaboratively with families and accommodate parent preferences within reason.
- EI providers must notify parents of formal complaint procedures at Intake and annually by providing each parent with the *Rhode Island Early Intervention Procedural Safeguards and Funding*. EI providers must also provide parents with *Understanding Procedural Safeguards* which includes formal complaint procedures whenever Prior Written Notice is given.

The following formal complaint processes are available:

Complaints

The Rhode Island Executive Office of Health and Human Services, as Lead Agency, is responsible to review, investigate and act on any complaints or allegations of noncompliance with Part C of IDEA or with Rhode Island Early Intervention Certification standards, policies, or procedures by a certified Early Intervention Provider. The complaint procedure is publicly available on the EOHHS website.

Any public agency, public employee, parent, private individual or organization may file a written complaint alleging that there has been an instance of noncompliance with IDEA Part C or with Rhode Island Certification Standards, policies, or procedures by any certified Early Intervention Provider.

- The parent, organization or individual filing the complaint must submit a signed written complaint to the Part C Coordinator and simultaneously forward a copy of the complaint to the EI provider serving the child.
- The Rhode Island Early Intervention Written Complaint form must be completed, signed, dated and submitted to the Part C Coordinator. This form is available in *Rhode Island Early Intervention Procedural Safeguards and Funding* document given at Intake and online at:
<http://www.eohhs.ri.gov/Consumer/FamilieswithChildren/EarlyIntervention.aspx>
- The EI provider will assist the parent in filing a written complaint if requested.
- The Early Intervention Complaint Form shall be used and must include:
 - A statement that the EI provider has violated a requirement of Part C of the IDEA; not more than one year prior to the date that the complaint is received;
 - The facts on which the statement is based;
 - The signature and contact information for the individual filing the complaint; and
 - The name and address of the child
 - The name of the EI provider serving the child
 - A description of the nature of the problem of the child, including facts relating to the problem; and

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- A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- The Lead Agency will conduct an investigation of the complaint through interviews and a review of the early intervention record(s) or may determine that an independent on-site investigation is necessary. The complainant will be given the opportunity to submit additional information orally or in writing within the required timeline.
- The EI provider will be given an opportunity to respond to the complaint; including at the discretion of the Lead Agency, a proposal to resolve the complaint.
- A parent who has filed a complaint will be given an opportunity to voluntarily engage in mediation with the EI provider.
- EI programs will cooperate with the Lead Agency by providing full access to all records and personnel involved.
- The Lead Agency will review all relevant information and determine whether there has been a violation of a requirement of the Rhode Island Early Intervention system and will issue a written decision within 60 days. A time extension may be permitted only if exceptional circumstances exist with respect to the complaint or if the parent and the EI provider agree to extend the time to engage in mediation.
- The written decision will address each allegation in the complaint and will contain the following:
 - Findings of facts and conclusions
 - The reasons for the final decision
 - The procedures to effectively implement the decision including corrective actions needed to achieve compliance, negotiations and technical assistance.
 - If the Lead Agency has found that the EI provider failed to provide appropriate services, the Lead Agency must address corrective actions required to correct the cause of the complaint. This includes corrective actions required of the system or of the EI program which impact the future provision of service for children with disabilities and their families, and compensatory services or monetary reimbursement as appropriate to the needs of the child and the child's family.
- Final decisions are binding and enforceable. The Lead Agency may monitor the EI provider regarding implementation of corrective actions and if corrective actions are not implemented the Lead Agency may terminate the EI provider's certification agreement.
- If an issue is raised in the written complaint, or there are multiple issues in which one or more are also part of a due process hearing request, the issue(s) must be set aside until the conclusion of the due process hearing. The remaining issues must be resolved using the written complaint time limits.

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- If an issue is raised in the written complaint, which has already been decided in a due process hearing, the previous decision is binding, and the complainant must be so informed.
- A written complaint alleging a failure of the EI provider to implement a decision made pursuant to a Request for Due Process Hearing must be resolved by the Lead Agency.
- If a parent is not satisfied with the final decision issued by the Lead Agency a Request for a Due Process Hearing may be filed by the parent if the written complaint was about a proposal to initiate or change the identification, evaluation or early intervention services of their child; or the refusal to initiate or change the child's identification, evaluation or early intervention services of their child.

Mediation

When filing a written complaint or a request for a due process hearing, families must be offered mediation as a formal avenue with which to resolve any dispute. Parents are notified of mediation procedures in *Rhode Island Early Intervention Procedural Safeguards and Funding* which they receive initially and annually from the EI provider. They also receive *Understanding Procedural Safeguards* whenever Prior Written Notice is given.

The Lead Agency (EOHHS) offers the parent mediation as a first step in resolving a disagreement when they file:

- A written complaint
- A request for a due process hearing
- Mediation is voluntary on the part of all parties. The Lead Agency (EOHHS) identifies individual mediators to provide EI mediation services. EOHHS maintains a list of qualified and impartial mediators who are required to undergo training in effective mediation techniques and are knowledgeable in laws, regulations, policies and procedures related to the provision of EI services.
- Mediation cannot be used to deny or delay the parent's right to a due process hearing or any other rights.
- The parent may refuse or withdraw from the mediation process at any time.
- The mediation process, including a written mediation agreement, must be completed to ensure enough time for completion of a due process hearing or complaint investigation by the Lead Agency unless an extension of time has been granted by the Lead Agency in the case of a written complaint or the hearing officer in the case of a due process hearing.
- 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 (parent and EI service provider) to the dispute. The Lead Agency must bear the cost of the mediation process, including the costs of meetings or sessions described above.

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- If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth the resolution of the dispute and:
 - States that all discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
 - Is signed by both the parent and a representative of the Lead Agency to bind the agency to what has been agreed upon.
 - A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a district court of the United States.

Due Process Hearing

A due process hearing is a formal review of a complaint identified by the parent, all data related to the problem, and testimony from the parties concerned.

Parents may request a hearing with regard to:

- A proposal to initiate or change the identification, evaluation or early intervention services of their child;
- Refusal to initiate or change the child's identification, evaluation or early intervention services of their child.
- If they have requested that information in their child's record be amended and the Early Intervention provider refuses to amend the record in accordance with the request (see Access to Records procedure).

- A Request for a Due Process Hearing form must be completed, signed and dated by the parent or the parent's representative and submitted to the Part C Coordinator. This form is included in *Rhode Island Early Intervention Procedural Safeguards and Funding* document given at Intake and is available online at:
<http://www.eohhs.ri.gov/Consumer/FamilieswithChildren/EarlyIntervention.aspx>
- The EI provider will assist the parent in filing a Request for a Due Process Hearing upon parent request.
- When a hearing is requested by the parent, the Lead Agency will inform the parent of the right to mediation and of any free or low-cost legal services available to the parent.
- The hearing will be scheduled at a time and in a location, that is convenient to the parents.
- The due process hearing must be completed, and a written decision mailed to each of the parties within thirty (30) calendar days of the receipt of the request. Mediation, if attempted, must occur within the same thirty (30) days. A hearing officer may grant specific extensions of time beyond the period set at the request of either party.
- The hearing officer:

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- shall not be an employee of the Lead Agency or program involved in the provision of early intervention services or care of the child, nor have a personal or professional interest that would conflict with his or her objectivity in implementing the process. A hearing officer cannot be an employee of an agency solely because the person is paid by the agency to implement hearing or mediation procedures under this part.
 - shall have knowledge about the provision of early intervention and services available for infants and toddlers with disabilities and their families.
 - shall listen to the presentation of viewpoints concerning the matter under review, examine all information relevant to the issues, and seek to reach a timely resolution of the matter.
- Parents have the right to:
 - be accompanied and advised by counsel and or individuals with special knowledge or training with respect to early intervention services for eligible children.
 - 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 them at least five days before the proceeding.
 - obtain a written or electronic verbatim transcription of the proceedings.
 - obtain written findings of fact, conclusions of law and decisions at no cost.
- Results of the Hearing
 - The hearing officer informs the parents or guardians and Lead Agency of their decision in writing within 30 days of the request.
 - Any party disagreeing with the results of the hearing has the right to bring civil action in State or Federal court.
- The Lead Agency will ensure that the results of the hearing are implemented.
- A child must continue to receive IFSP services consented to by the parent pending a hearing unless the parent and Lead Agency (EOHHS) agree otherwise. If the hearing involves agreement on the initial IFSP, the child shall receive those services that are not in dispute.