

Notice of Child and Family Rights and Safeguards

in the New Mexico IDEA Part C Early Intervention System



Help
Your Child
Grow!



GROWING Wings

The **Individuals with Disabilities Education Act (IDEA)** is the federal law that includes provisions for early intervention services for eligible infants and toddlers (birth to three) with disabilities and their families. These provisions form **Part C of IDEA** and are articulated in federal regulations and in State Regulations (7.30.8 NMAC).

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Introduction

In New Mexico, the IDEA Part C early intervention system is called the **Family Infant Toddler (FIT) Program**. The system is designed to maximize family involvement and ensure parental consent in each step of the early intervention process, beginning with determination of eligibility and continuing through service delivery and transition.

The **FIT Program** includes rights and procedural safeguards to protect parents and children. Parents must be informed about these safeguards in the **FIT Program** so that they can effectively participate in the services provided to their family. **Notice of Child and Family Rights and Safeguards in the New Mexico Family Infant Toddler Program IDEA Part C Early Intervention System** is an official notice of the rights and safeguards of children and families as defined under Federal IDEA Part C regulations.

Information about child and family rights and safeguards is provided to families through a FIT provider agency. These agencies are responsible for IDEA Part C early intervention services in New Mexico communities.

Your FIT Provider Agency:

Your **Family Service Coordinator** will provide ongoing information and assistance to you regarding your rights throughout the period of your child's eligibility for services.

45 Days from Referral to IFSP!



The Right to Participate

Your participation in the **FIT Program** is voluntary. It is up to you to decide to participate in the program. If you accept services, you will determine the level of your participation.

You are an important part of planning services for your child. No one knows your child better than you and your family! You are encouraged to speak up about your family's and child's needs. You must agree to services for your child and sign the plan before these services begin.

The Right to Have Your Child Evaluated

When your child is referred to the **FIT Program**, you have the right to a comprehensive multidisciplinary evaluation to determine eligibility. If you disagree with the results of the evaluation, there is a procedure for resolving disagreements. (See "The Right to Help with Resolving Disagreements" on page 3.)

The Right to Give Your Consent

Your FIT provider agency must have your consent in writing on a Prior Written Notice (PWN) form before any evaluations, assessments or services take place. Your provider must also have your written consent before sharing information about you or your child with others. You can withdraw your consent at any time.

The Right to a Plan for Services within 45 Days of Referral

If your child is eligible for services, your family has the right to a written plan for services within 45 days of referral. This plan is called your **Individualized Family Service Plan (IFSP)** and includes early intervention services based on your family's needs and goals for your child. A team, including you, your Family Service Coordinator and early intervention staff, will meet to develop this plan. This IFSP team can also include family members, friends or advocates that you choose to help you decide what is best for your family and child. This plan is reviewed every six months or more frequently, according to your family's goals.

The Right to Prior Notice of IFSP Meetings and Evaluations

You will have meetings with your FIT provider agency during your time in the **FIT Program**. Meetings must be held at a time and place that is best for you. Each time you meet you will be asked to sign a PWN form. If necessary, this information will be shared with you orally in a language you understand. You must receive notification of the meetings or evaluations at least five days in advance (unless otherwise agreed) so that you can arrange to have family members or others at the meeting. Each PWN should include the following information about the meeting:

- Where and when it will be held
- Who will be there
- Purpose of the meeting
- Information about your rights to confidentiality

The Right to Understand

You have the right to receive answers to questions about your child's development, about services and about the **FIT Program** from your local FIT provider agency. Ask for help from the staff if you don't understand. If needed, you have the right to receive an interpretation and/or translation in your native language, in sign language or in Braille.

The Right to Confidentiality

All information about your child and family is confidential. Sometimes, your FIT provider agency will need to obtain or share information about your child to determine eligibility or to arrange for services. Your FIT provider agency must get your permission to request or share information with other agencies or service providers. It is up to you if you want to share this information. Only early intervention staff members who are involved with you and your child may look in your child's record. No one else may look at your child's record without your permission. Your FIT provider agency must keep documentation of who looks at your child's record. You may ask for a written explanation about how private information is protected by your FIT provider agency. Your right to confidentiality is covered under federal law by both the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Family Educational Rights and Privacy Act (FERPA).

The Right to Review Records

Your FIT provider agency keeps your child's record. You may ask your provider to see them or to give you a copy. If you disagree with information in your child's record, you may ask your FIT provider agency to correct that information. If they disagree, you can request a FERPA hearing. The hearing must be conducted within 30 calendar days and any individual, including an attorney, may represent you at the hearing. Your child's record will be kept at least seven (7) years after your family has left the **FIT Program**.

The Right to Help with Resolving Disagreements

Occasionally, parents and FIT provider agency staff don't agree with evaluation results, assessment or early intervention services. If there is disagreement, try talking with your Family Service Coordinator, who may be able to help resolve the disagreement informally. Each local FIT provider agency has a complaint procedure that can be used if you have a disagreement.

If you are not able to reach agreement with your FIT provider agency, you can call the **FIT Program toll-free at (877) 696-1472**. A staff person will be assigned to help you resolve the disagreement. You may also request mediation or a hearing to resolve a disagreement.

The Right to Submit a Complaint

If you feel your FIT provider agency or a state agency has ignored or violated a federal or state regulation regarding services to your child and family, you can write a letter of complaint to the **FIT Program Manager** (see address on page 6). After receiving your written complaint a staff person will be assigned to investigate and gather information from you and others concerned. The **FIT Program Manager** will review all of the information and reach a decision about your complaint within 60 calendar days. Following the findings and decision issued from a due process hearing, families also have the right to file a civil action under Code of Federal Regulations (CFR)/Vol. 76, No. 188, 303.438.

You are entitled to be notified of specific procedural safeguards under IDEA Part C. These safeguards are described below.

Native language,

where used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of an eligible child.

A Prior Written Notice

Prior Written Notice (PWN) must be given to you within a reasonable time (five calendar days) before a FIT provider agency proposes or refuses to initiate or change the identification (eligibility), evaluation or placement of your child (location of your services), or the provision of appropriate early intervention services to your child and/or family. That notice must be sufficiently detailed to inform you about:

1. The action that is being proposed or refused;
2. The reasons for taking the action;
3. All procedural safeguards that are available under IDEA Part C; and
4. The state's complaint procedures, including a description of how to file a complaint and the timelines for those procedures.

The notice must be written in language understandable to the general public and provided in your native language unless clearly not feasible to do so. If your native language or other mode of communication is not a written language, the local participating agency/provider shall take steps to ensure that:

1. The notice is translated or interpreted for you in your native language or other mode of communication;
2. You understand the notice;
3. There is written evidence that the requirements of this section have been met; and
4. If you are deaf, blind, unable to read or have no written language, the mode of communication must be that normally used by you (such as sign language, Braille or oral communication).

B Informed Consent

Informed Consent means:

1. You are fully informed of all information about the activity(ies) for which your consent is sought. This information is provided in your native language unless clearly not feasible to do so, or other appropriate mode of communication.
2. You understand and agree in writing to the carrying out of the activity(ies) for which your consent is sought.
3. You understand that the granting of consent is voluntary, and you may revoke consent at any time.

Your written consent via a Prior Written Notice must be obtained before the initial evaluation and assessment of your child is conducted and before early intervention services are provided. If you do not consent, the FIT provider agency shall make reasonable efforts to ensure that you:

1. Are fully aware of the nature of the evaluation and assessment or the services that would be available; and
2. Understand that your child will not be able to receive the evaluation and assessment or services unless consent is given.

In addition, as the parent of a child eligible under IDEA Part C, you may decide whether your child or other family member will accept or refuse any early intervention service(s) under this program.

C Records

Review of Records

In accordance with the Confidentiality of Information procedures outlined in the next section of this document, you must be given the opportunity to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints concerning your child and any other portion of the IDEA Part C program involving records about your child and your family.

Your FIT provider agency must give you the opportunity to inspect and review any records relating to your child, which are collected, maintained or used by the agency or provider under IDEA Part C. Your FIT provider agency must comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to identification, evaluation, placement or provision of services for your child and family and in no case more than 10 days after the request has been made. [See 34 CFR 303.405(a).]

The right to inspect and review records includes:

1. A response from your FIT provider agency to your reasonable requests for explanations and interpretations of your child's record;
2. Receipt of a copy of your child's record, including a copy of the evaluation and assessments, and the IFSP, as soon as possible after each IFSP meeting – at no cost to you.
3. Having someone who is representing you inspect and review the record.

Your FIT provider agency may presume that you have the authority to inspect and review your child's record unless the agency or provider has been advised that you do not have the authority under applicable New Mexico law.

Your FIT provider agency shall keep a written record of parties obtaining access to records collected, obtained or used under IDEA Part C (except access by parents and authorized employees of such agency or provider), including the name of the party, the date access was given and the purpose for which the party is authorized to use the child's record. If any record includes information on more than one child, you may inspect and review only the information relating to your child, or be informed of that specific information.

Your FIT provider agency shall provide you, upon request, a list of the types and locations of records collected, maintained or used by the agency or provider. The FIT provider agency may charge a fee for copies of records that are made for you under IDEA Part C if the fee does not effectively prevent you from exercising your opportunity to inspect and review those records. However, they may not charge a fee to search for or to retrieve information under IDEA Part C.

Your early intervention provider must provide at no cost to you a copy of each evaluation, assessment of the child, family assessment and IFSP as soon as possible after each IFSP meeting. If you believe that information in records collected, maintained or used under IDEA Part C is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request the provider that maintains the information amend the information.

Your provider must decide whether to amend the information in accordance with the request within a reasonable period of time after it receives the request. If your provider refuses to amend the information as you request, you must be informed of the refusal and be advised of the right to a hearing.

Your FIT provider agency, on request, must provide you an opportunity for a hearing to challenge information in your child's record to ensure that it is not inaccurate, misleading or violates the privacy or other rights of your child or family.

1. If, as a result of the hearing, your provider decides that the information is inaccurate, misleading or otherwise in violation of the privacy or other rights of the child, it must amend the information accordingly and must inform you in writing.
2. If, as a result of the hearing, your provider decides that the information is not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child, you must be informed of your right to place in your child's record a statement commenting on the information and setting forth any reasons for disagreeing with the decision of the agency or provider.

Any explanation placed in your child's record under this section must:

1. Be maintained by your FIT provider agency as part of your child's record as long as the records or contested portion (that part of the records with which you disagree) is maintained by the agency or provider; and
2. If your child's record or the contested portion are disclosed by such agency or provider to any party, the explanation must also be disclosed to the party.

A hearing held under this section must be conducted according to the procedures under the Family Education Rights & Privacy Act (FERPA), which is found in statute at 20 U.S.C. §1232g, and in federal regulations at 34 CFR Part 99.

Confidentiality of Information

All information about your child and family is confidential. There are times when your FIT provider agency will need to request your consent to obtain or share information, such as when medical records are needed to determine eligibility or when your child is transitioning to another program. As a parent, you will always be told the reason for that request. It is always your choice as to whether or not you want to share this information.

Your FIT provider agency must keep a record of who looks at your child's record. You can ask for a written explanation about how private information is protected by that agency.

Information from your child's early intervention record cannot be released without your consent, unless the agency or provider is authorized to do so under FERPA. If you refuse to provide consent, the FIT provider agency may initiate due process procedures for resolving the disagreement.

The following safeguards must be in place to ensure confidentiality of records:

1. Your FIT provider agency must protect the confidentiality of personally identifiable information at all stages in the process, including during collection, maintenance, use, storage, disclosure and destruction.
2. All persons collecting or using personally identifiable information must receive training or instruction on confidentiality requirements of New Mexico IDEA Part C, FERPA and HIPAA.
3. Your FIT provider agency must maintain for public inspection a current listing of names and positions of those personnel within the agency who have access to personally identifiable information.
4. Your FIT provider agency must attempt to inform parents when personally identifiable information collected, maintained or used is no longer needed to provide services to the child.
5. Permanent records must be maintained for a minimum of seven (7) years following the child's exit from the FIT system before being destroyed. After that time period, records shall be destroyed at the request of the parent(s) or may be destroyed at the discretion of the FIT provider agency.
6. Permanent records of a child's name, address and phone number may be maintained.

D Resolving Disagreements/Complaints

If you feel your FIT provider agency or a state agency has ignored or violated a federal or state regulation regarding services to your child and family, you can write a letter of complaint to the **FIT Program Manager** (see address below).

The complaint must include:

1. A statement that the FIT provider agency has violated a requirement of IDEA Part C.
2. Facts on which the statement is based.
3. Signature and contact information for the complainant.
4. If alleging violations with respect to a specific child,
 - Name and address of the child's residence.
 - Name of the FIT provider agency serving the child.
 - Description of the nature of the problem of the child, including facts relating to the problem.
 - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

After receiving your written complaint, a staff person will be assigned to investigate and gather information from you and others concerned. The **FIT Program** office will review all of the information and reach a decision about your complaint within 60 calendar days.

If you disagree with your FIT provider agency about the identification, evaluation and placement of your child or provision of appropriate early intervention services to your child or family, your Family Service Coordinator may be able to help resolve the disagreement informally.

Your local FIT provider agency also has a complaint procedure that can be used if you have a disagreement.

If you are not able to reach agreement with your FIT provider agency you can call the **Family Infant Toddler Program (toll free 1-877-696-1472)**. A staff person will be assigned to help you resolve the disagreement. You can also request **mediation** or a **due process hearing** to resolve a disagreement.

During the pendency (time period) of any proceeding involving a parent/provider disagreement (complaint), unless your FIT provider agency and you otherwise agree, your child and family will continue to receive the appropriate early intervention services currently being provided.

If the disagreement (complaint) between you and the provider involves an application for initial services, your child and family must be provided the services that are not in dispute.

Mediation is a process in which trained mediators help people communicate and make informed choices in order to find a resolution to their dispute. The mediator is impartial, neutral and unbiased. Mediation results in an agreement that all parties agree to follow. To request mediation please send a letter to the **FIT Program Manager** at the address on page 6. The mediation meeting will be held within 30 days of your request. Choosing mediation as a way to resolve your disagreement does not deny your right to request a due process hearing. Mediation is voluntary and at no cost to parents.

Due process hearings involve a State-appointed Hearing Officer who reviews all information from all people involved. The hearing shall be carried out at a time and place that is convenient to you and other people involved. You may be advised and accompanied to the hearing by a lawyer or by someone with knowledge of the early intervention system. You may present evidence, confront and cross-examine, and require the attendance of witnesses. A written decision will be mailed to each person involved within 30 days from the day a request for a hearing is filed. To request a due process hearing you should send a letter to the **FIT Program Manager** (see address on page 6). While the hearing is in process, your early intervention services will continue. Mediation will be offered to all individuals who submit a request for a due process hearing. Mediation is voluntary and at no cost to parents.

E Surrogate Parents

The rights of children eligible under IDEA Part C are protected even if:

1. No parent can be identified;
2. The local FIT provider agency, after reasonable efforts, cannot determine the whereabouts of a parent; or
3. The child is a ward of the state of New Mexico (legal custody of the child and all parental rights and responsibilities for the care and custody of the child have been terminated by court order or permanent entrustment agreement pursuant to applicable law).

An individual is assigned to act as a "surrogate" for the parent according to the procedures that follow. The procedures include a method for determining whether a child needs a surrogate parent and assigning a surrogate to the child. The following criteria are employed when selecting surrogates:

1. Surrogate parents are selected at the local level in the manner allowable under New Mexico law; and
2. A person selected as a surrogate parent:
 - Has no interest that conflicts with the interest of the child he or she represents.
 - Has knowledge and skills that ensure adequate representation of the child.
 - Is not an employee of any state agency; or a person or an employee of any person providing early intervention services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate parent under this section is not an employee solely because he or she is paid by a local FIT provider agency to serve as a surrogate parent.
 - Resides in the same general geographic area as the child, whenever possible.

A surrogate parent may represent the child in all matters relating to:

1. The evaluation and assessment of the child.
2. Development and implementation of the child's IFSP, including annual evaluations and periodic reviews.
3. The ongoing provision of early intervention services to the child.
4. Any other rights established under IDEA Part C.

F Contact Information

The State Lead Agency for the **New Mexico Family Infant Toddler Program IDEA Part C Early Intervention System** is the **New Mexico Department of Health**. To file a complaint, or to find out more about complaint procedures in New Mexico, including resolution of disputes through mediation and/or impartial due process hearings, contact:

To request mediation

or a due process hearing please send a letter to the **FIT Program Manager** at the following address:

**NEW MEXICO
DEPARTMENT OF HEALTH
Family Infant Toddler Program
PO Box 5619
Santa Fe, NM 87502-5619**

Mediation will be offered to all individuals who submit a request for a due process hearing.

**NM DEPARTMENT OF HEALTH
Family Infant Toddler Program
PO Box 5619
Santa Fe, NM 87502-5619
Phone: (877) 696-1472 (Toll-Free)
Fax: (505) 827-2455
FIT.Program@state.nm.us**

ABCs

of Early Intervention

Assessment – An ongoing process – including the use of tools, observation and parent interview – to identify your child’s and/or family’s needs and strengths.

Child Development – The process of learning and mastering new skills over time; includes ability to move, communicate, think, see, hear and play with toys or other people.

Child’s Record – The file that includes evaluations, reports, progress notes and the child’s IFSP, and is maintained by the Family Service Coordinator.

Comprehensive Multidisciplinary Evaluation – The initial evaluation to determine a child’s eligibility for FIT services is completed by at least two professionals with expertise in two different areas of child development. It includes gathering information from a parent through a routines-based interview, review of medical records, assessment and observation of the child.

Confidentiality – The restriction of the sharing of personally identifiable information without your consent.

Due Process Hearing – A hearing involving a hearing officer who rules on evidence related to a disagreement between a parent and an early intervention provider.

Early Intervention – A collection of services provided by public and private agencies and mandated under law to support eligible children and their families in enhancing a child’s potential growth and development from birth to age three and to enhance the capacity of families to meet the special needs of infants and toddlers.

Eligibility – Requirements your child must meet in order to receive early intervention services from the New Mexico Family Infant Toddler Program.

Family Service Coordinator – A person who works with your family to help coordinate the evaluation, the IFSP and early intervention services as well as other community supports and resources for your child and family.

FIT (Family Infant Toddler) Program – The program at the Department of Health that oversees the delivery of early intervention services in New Mexico through a network of public and private providers.

FIT Provider Agency – The NM Family Infant Toddler Program contracts with local public and private agencies that are responsible for IDEA Part C early intervention services in New Mexico communities.

Functional Outcomes – Statements of goals you set for your child and family that are documented in your IFSP.

IDEA (Individuals with Disabilities Education Act) Part C – The federal legislation that determines the implementation of early intervention by states.

IFSP (Individualized Family Service Plan) – A written plan for your child’s and family’s desired functional outcomes and strategies to meet identified goals. The IFSP is a legal document.

IFSP Team – The team that includes you, your Family Service Coordinator and other professionals involved in the development of your IFSP and in providing ongoing services to your family and anyone else you’d like included (i.e., other family members, childcare staff, pediatrician).

Informed Consent – The written permission or authorization by a parent to participate in early intervention activities. The parent would have been fully informed of all relevant information in their native language or mode of communication. The parent will be informed that granting of consent is voluntary and can be revoked at any time.

Mediation – A process in which a trained mediator helps people communicate and make informed choices in order to find a resolution to their dispute. The mediator is impartial, neutral and unbiased. Mediation results in an agreement that all parties agree to follow.

Parent – Includes the biological parent(s), guardian, acting parent (including foster parents) or surrogate parent (assigned by the state in situations where there is no other person to act as parent at the IFSP).

Prior Written Notice (PWN) – Parents have the right to understand all information and reports about their child’s development. Parents also have the right to give or refuse consent for all early intervention service activities. This consent must be documented on a Prior Written Notice form.

Referral – When a parent or professional (with the parent’s permission) thinks that a child may benefit from early intervention services contacts a FIT provider agency or the FIT Program..

Strategies – The methods and activities developed to achieve functional outcomes. Strategies are written into the IFSP.

Transition – The process of planning for supports and services for when your child will leave the FIT Program at age three.