

**ALABAMA BOARD OF REHABILITATION SERVICES
EARLY INTERVENTION**

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Board of Rehabilitation Services

RULE NO. & TITLE: Amend Rule No. 795-3-1-.04 Procedural Safeguards.

INTENDED ACTION: The ALABAMA BOARD OF REHABILITATION SERVICES proposes to amend rules and regulations.

SUBSTANCE OF PROPOSED ACTION: The amendment of this rule is authorized under the authority of ALA. CODE 1975 §21-9-1 *et seq.*, and the Alabama Board of Rehabilitation Services wishes to amend this rule so as to come in compliance with requirements for the program. This amended rule and regulation is issued under the authority of ALA.CODE 1975 §21-9-1 *et seq.* This rule covers specific requirements and procedure necessary for the proper administration of the Early Intervention Program and brings this rule into conformity with federal regulations.

Copies of the proposed amended rule are available for inspection in the offices of the Board, 602 South Lawrence Street, Montgomery, Alabama 36104. Upon reasonable notice, persons requiring accommodation may obtain copies in large print, Braille or other media.

TIME, PLACE, MANNER OF PRESENTING VIEWS: All interested persons may submit written comments, and if requested in advance may personally appear before the Alabama Board of Rehabilitation Services by submitting a request to appear, to:

Stephen K. Simpson
602 South Lawrence Street
Montgomery, Alabama 36104
Telephone: (334) 293-7187

To be considered by the Board, written comments must be received in the office of the Board no later than two days before the next regularly scheduled Board meeting on June 8, 2012, to wit: not later than June 6, 2012. Persons desiring to orally express their views before the Board must first submit their comments in writing as stated above, and shall be limited to ten minutes per person.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: June 6, 2012.

CONTACT PERSON AT AGENCY:

Stephen K. Simpson
602 South Lawrence Street
Montgomery, Alabama 36104
Telephone: (334) 293-7187



Stephen K. Simpson
Alabama Board of Rehabilitation Services

ALABAMA DEPARTMENT OF REHABILITATION
SERVICES
EARLY INTERVENTION

CHAPTER 795-3-1
EARLY INTERVENTION PROGRAM

TABLE OF CONTENTS

Chapter 795-3-1-.01	General Information
Chapter 795-3-1-.02	Reserved
Chapter 795-3-1-.03	Reserved
Chapter 795-3-1-.04	Procedural Safeguards
Chapter 795-3-1-.05	Reserved
Chapter 795-3-1-.06	Forms Appendix

795-3-1-.04 Procedural Safeguards.

(1) **Surrogate Parents.** When no parent or guardian can be identified, the eligible infant or toddler shall be represented by a surrogate parent on any occasion when a parent would normally be involved in an early intervention decision.

(a) **Determination of the Need for a Surrogate Parent.** A surrogate parent is needed when:

1. No parent or guardian can be identified, or
2. The agency or designated service provider, after reasonable efforts, cannot discover the whereabouts of a parent or guardian, or
3. The infant or toddler is a ward of the State under State law.

(b) **Surrogate Parent Appointment Procedures.** The following procedures shall be utilized to ensure an eligible child's right to a surrogate parent:

1. Any person who knows of an infant or toddler who may need early intervention services (or is receiving early intervention services) and knows or believes that no parent is available to represent the infant or toddler in early intervention decisions may submit a written request for the appointment of a surrogate parent to the ~~State Department of Rehabilitation Services~~ appropriate District Coordinating Council.

2. Upon receipt of a request, the appropriate District Coordinating Council shall ~~be requested to~~ determine whether the infant or toddler is without appropriate representation. Once a determination is made, the District Coordinating Council shall assign a surrogate parent. A written notice of the determination and/or the appointment of a surrogate parent shall be sent to the State Department of Rehabilitation Services, Attention: Early Intervention within thirty days of the receipt of the request. The notice shall include the name of the surrogate parent, address, telephone number, the information reviewed to determine whether or not the infant or toddler meets the criteria for the assignment of a surrogate parent and satisfaction of the requirements of Alabama Administrative Code r. 795-3-1-.04(l)(c).

3. In situations where there is a foster parent appointed by an agency of the state, he/she shall be deemed the parent, if the natural parents' authority to make the decisions required of parents under the Early Intervention program has been extinguished under State law; and the foster parent has an ongoing, long-term parental relationship with the child, is willing to make required Early Intervention decisions, and has no interests that would conflict with the interests of the child.

(c) Qualifications of a Surrogate Parent. The Department of Rehabilitation Services shall ensure that the person recommended as a surrogate parent:

1. Has no interest that conflicts with the interests of the infant or toddler they represent

2. Has knowledge and skills which ensure adequate representation of the infant or toddler, and

3. Is not an employee of the Alabama Department of Rehabilitation Services or any State other public agency or any Early Intervention service provider, ~~a person, or employee of any person,~~ providing early intervention services, education, care or other services to the infant or toddler or any family member of the infant or toddler.

4. A person who otherwise qualifies to be a surrogate parent under Alabama Administrative Code rule 95-3-1-.04(1)(c)(3) is not an employee solely because he/she is paid by an agency or designated service provider to serve as a surrogate parent.

(d) Scope of Surrogate Parent Representation. A surrogate parent may represent the infant or toddler in all matters related to the evaluation and assessment, development and implementation of an Individualized Family Service Plan (IFSP), including annual evaluations and periodic reviews, the

ongoing provision of early intervention services to the infant or toddler, and any other rights established under the Individuals with Disabilities Education Act.

(2) Mediation Conference. When an agency or designated service provider and the parent(s) disagree(s) on matters pertaining to the identification, evaluation, early intervention placement, or the provision of appropriate early intervention services to the infant or toddler or his/her family, any party may request an Impartial Due Process Hearing to resolve the issue(s). (See Alabama Administrative Code r. 795-3-1-.04(3).) An optional voluntary process of mediation is offered, where the parties may resolve their differences in a less formal and adversarial manner. When an Impartial Due Process Hearing has been requested, any subsequent request for a Mediation Conference shall be honored as quickly as possible. A Mediation Conference shall not be utilized to delay an Impartial Due Process hearing if one has been requested. The following procedures are available to assist agencies or designated service providers and parents resolve issues through Mediation:

(a) Any party may request a Mediation Conference by writing to the State Commissioner of Rehabilitation Services, Attention: Early Intervention. A qualified and impartial Mediation Officer who is trained in effective mediation techniques shall be selected by the Alabama Department of Rehabilitation Services on a random, rotational or other impartial basis manner or by agreement with the parents from a list of individuals who are qualified as mediators and knowledgeable in laws and regulations relating to the provision of ~~special education and related~~ early intervention services.

(b) The Mediation Officer will work with the parties to establish a suitable date, time, and location which will be confirmed in writing.

(c) The Mediation Officer may request and review pertinent records as needed prior to the Mediation Conference.

(d) Any party in a Mediation Conference may utilize a representative when they believe such assistance would be helpful in resolving the issues.

(e) While the Mediation Conference is an informal process to resolve problems, the following procedures may be utilized by the Mediation Officer to provide a forum whereby discussion can be accomplished and agreements made in an orderly manner:

1. Introduction of the Mediation Officer,
2. Introduction of the conference participants,
3. Explanation of the conference format,
4. Statement of the purpose of the conference,
5. Identification and agreement of the issues to be resolved,
6. Discussion of each issue separately,

7. Agreement regarding each issue, and
8. Summary by the Mediation Officer which includes the issues, agreements, and additional administrative remedies available to the parties.

(f) The Mediation Officer shall provide a written report to the parties, with a copy to the State Commissioner of Rehabilitation Services, regarding the conference issues and agreements reached if any. Any agreement reached shall contain language indicating that it is a legally binding agreement and must be signed by the parent and a representative of the Alabama Department of Rehabilitation Services that has authority to legally bind such agency. The report shall become a part of the infant or toddler's record.

(g) Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of the process.

(h) The agency or direct service provider will provide for payment of the Mediation officer, interpreter and any other costs or expenses incurred.

(3) Impartial Due Process Hearing Procedure. When the parent(s) of an early intervention infant or toddler disagree(s) with an agency or designated service provider in matters pertaining to the identification, evaluation, early intervention placement, or the provision of appropriate early intervention services, an Impartial Due Process Hearing may be utilized as the appropriate administrative remedy to resolve the dispute.

(a) Procedure for Requesting an Impartial Due Process Hearing.

1. The parent(s) or their designated representative or an official from an agency or designated service provider may request an Impartial Due Process Hearing by writing the agency or designated service provider involved in the dispute with a copy sent to the State Commissioner of Rehabilitation Services, Attention: Early Intervention.

2. The written request for an Impartial Due Process Hearing shall include:

(i) The name of the agency or designated service provider involved in the dispute,

(ii) Name, address, and telephone number of the infant or toddler, parent(s) and their representative, if appropriate, or in the case of a homeless child, available contact information for the child,

(iii) Specific reason(s) for the hearing request. The reason(s) must be related to one or more of the following: identification, early intervention placement, evaluation, and/or the provision of appropriate early intervention services, and

(iv) Typed or printed name and signature of the person requesting the hearing.

(b) Resolution Meeting. Within 15 days of the receipt of a request for an Impartial Due Process Hearing and prior to the initiation of the hearing, the agency or direct service provider involved will convene a resolution meeting with the parent(s) or their designated representative and the relevant member or members of the IFSP Team who have specific knowledge of the facts identified in the complaint and a Department representative. The purpose of this meeting is to provide an opportunity to resolve the complaint.

1. The resolution meeting must include a representative who is authorized to make decisions on behalf of each party.

2. A party may not be represented by an attorney at the resolution meeting unless the parent(s) is/are accompanied by an attorney.

3. The parent(s) and the agency or direct service provider will determine the relevant members of the IFSP Team to attend the meeting.

4. If the parties are able to resolve the dispute during the resolution meeting, the parties shall execute a legally binding agreement that is signed by the parent(s) and the other party representatives and that is enforceable in any State court of competent jurisdiction or in a District Court of the United States. Such agreement may be voided by any party to it within three business days of its execution.

5. Though recommended, the resolution meeting is not mandatory if the parent(s) and parties agree in writing to waive it or agree to use mediation to attempt to resolve the dispute.

6. If the request for an Impartial Due Process Hearing has not been resolved to the satisfaction of the parent(s) within 30 days of the receipt of the request, the Impartial Due Process Hearing may occur. Except as provided in this paragraph below, the timeline for issuance of an Impartial Due Process Hearing final decision shall begin at the expiration of this 30-day period. The 45-day timeline for issuance of the Impartial Due Process Hearing final decision starts the day after both parties agree in writing to waive the resolution meeting,

or after the mediation or resolution meeting starts but before the end of the 30-day period, the parties agree in writing that no agreement is possible, or if both parties agree in writing to continue the mediation at the end of the 30-day resolution period, but later, the parent , agency or direct service provider withdraws from the mediation process.

7. If the agency or direct service provider is unable to obtain the participation of the parent(s) in the resolution meeting after reasonable efforts have been made and documented, the agency or direct service provider may, at the conclusion of the 30-day period, request that a hearing officer dismiss a parent's request for an Impartial Due Process Hearing.

8. If the agency or direct service provider fails to hold the resolution meeting within 15 days of receiving notice of a parent's request for an Impartial Due Process Hearing or fails to participate in the resolution meeting, the parent may seek the intervention of a hearing officer to begin the due process hearing timeline.

(c) The appointment of an Impartial Due Process Hearing Officer shall be made by the State Commissioner of Rehabilitation Services.

(d) Qualifications of Impartial Due Process Hearing Officer.

1. A hearing may not be conducted by a person who is an employee of any agency or designated service provider which is directly involved in the provision of early intervention services or care of the infant or toddler or by any person having a personal or other professional interest which would conflict with his/her objectivity in a hearing.

2. A person who otherwise qualifies to conduct a hearing is not an employee of the agency solely because he/she is paid by an agency or designated service provider to serve as a hearing officer.

3. An impartial due process hearing officer must possess knowledge of, and the ability to understand, the provisions of the Act, Federal and State regulations pertaining to the Act, and legal interpretations of the Act by Federal and State courts;

4. An impartial due process hearing officer must possess the knowledge and ability to conduct hearings in accordance with appropriate, standard legal practice; and

5. An impartial due process hearing officer must possess the knowledge and ability to render and write decisions in accordance with appropriate, standard legal practice.

(e) Impartial Due Process Hearing Rights for Parent(s) and Agency(ies) or Designated Service Provider(s).

1. A party to a hearing has the right to:

(i) Be accompanied and advised by counsel and/or individuals who have knowledge or training with respect to early intervention services,

(ii) Present evidence and confront, cross-examine, and compel the attendance of witnesses,

(iii) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) business days before the hearing,

(iv) Obtain a written or an electronic verbatim record of the hearing at no cost, and

(v) Obtain written, or at the option of the parents electronic, findings of fact and decision at no cost.

2. Parents must be afforded the right of opening the hearing to the public. ~~two (2) additional rights, which are to:~~

~~(i) Have the child who is the subject of the hearing present, and~~

~~(ii) Open the hearing to the public.~~

(f) Parent's Responsibility In Impartial Due Process Hearing Procedure.

1. Prehearing activities.

(i) Request the Impartial Due Process Hearing as outlined in Alabama Administrative Code r. 795-3-1-.04(3)(a), unless it has already been requested by the agency or designated service provider.

(ii) Determine the witness(es) who can provide relevant information at the hearing and request their attendance. Each party is responsible for the attendance of their witness(es).

(iii) Cooperate with the Impartial Due Process Hearing Officer in planning for a location, date, and time for the hearing.

(iv) Disclose and exchange any written evidence and a list of potential witness(es) to the agency or designated service provider at least five (5) business days prior to the hearing.

(v) Send a copy of the witness list and a copy of any written evidence to the designated Impartial Due Process Hearing Officer.

(vi) Inform the Impartial Due Process Hearing Officer orally or in writing, ~~at least five (5) calendar days prior to the hearing,~~ regarding the parent's decision pertaining to ~~the infant or toddler's presence at the hearing and opening the hearing to the public.~~

2. Hearing activities.

(i) Present the case.

3. Posthearing activities.

(i) Comply with the Impartial Due Process Hearing Officer's decision or appeal within specified time limits.

(g) Agency or Designated Service Provider Responsibility In Impartial Due Process Hearing Procedure.

1. Prehearing activities.

(i) Request an Impartial Due Process Hearing as outlined in Alabama Administrative Code r. 795-3-1-.04(3)(a), unless one has already been requested by the parent(s) and state a justifiable reason for the request.

(ii) Inform the parent(s) of any free or low cost legal and other relevant services available in the area.

(iii) Provide the parent(s) with a copy of the Early Intervention Child and Parent Rights Form ~~EL94-7~~.

(iv) Determine the witness(es) who can provide relevant information at the hearing and request their attendance at the hearing. Each party is responsible for the attendance of their witness(es).

(v) Make the infant or toddler's early intervention records available to the parent(s) and/or their designated representative(s) upon request.

(vi) Cooperate with the Impartial Due Process Hearing Officer in planning for a location, date, and time for the hearing.

(vii) Disclose and exchange any written evidence and a list of potential witness(es) to the parent(s) at least five (5) business days prior to the hearing.

(viii) Send a copy of the witness list and a copy of any written evidence to the Impartial Due Process Hearing Officer.

(ix) Provide for a qualified court reporter to make an official transcript of the hearing. Upon request, copies will be provided to the parties.

(x) Arrange for an interpreter as needed.

2. Hearing activities:

(i) Assume the burden of proof regarding the appropriateness of either the Evaluation and Assessment or IFSP.

(ii) Present the case at the hearing.

(iii) Abide by the decision of the Impartial Due Process Hearing officer, subject to civil action.

3. Posthearing activities:

(i) Provide for payment of the Impartial Due Process Hearing Officer, court reporter, and interpreter.

(ii) Provide or make arrangements for the payment of all costs and expenses incurred.

(h) State Department of Rehabilitation Services Responsibility In Impartial Due Process Hearing Procedure.

1. Prehearing activities:

(i) Ensure that the issue(s) is one that pertains to the identification, evaluation, early intervention program placement, or the provision of appropriate early intervention services and obtain any additional clarification, if necessary regarding the issue prior to assigning an Impartial Due Process Hearing Officer.

(ii) Keep a list of those persons who are qualified to serve as Impartial Due Process Hearing Officers, including a statement of their qualifications.

(iii) Appoint a qualified Impartial Due Process Hearing Officer.

2. Posthearing activities:

(i) Ensure that not later than forty-five (45) calendar days after the end of the resolution period set out in Alabama Administrative Code Rule 795-3-1-.04(3)(b)6:

(I) A final decision is reached, and

(II) A copy of the decision is mailed to each of the parties.

(ii) Maintain a tracking and filing system regarding each Impartial Due Process Hearing to include, but not be limited to, all written correspondence, evidence, decisions, and transcripts.

(i) Impartial Due Process Hearing Officer's Responsibility in Hearing.

1. Prehearing activities. The Impartial Due Process Hearing Officer shall:

(i) Notify the Department of Rehabilitation Services, Attention: Early Intervention of all interim or final rulings or orders affecting the hearing. This includes, but is not limited to, continuance(s), settlement(s), or extension(s) of timeline(s).

(ii) Inform the parties of his/her appointment as the Impartial Due Process Hearing Officer.

(iii) Cooperate with the parties to establish a date, time, and location for the hearing which is reasonably convenient to the parent(s) and infant or toddler involved.

(iv) Clarify the matter(s) in dispute, if necessary.

(v) Determine if the infant or toddler will attend the hearing (parental choice).

(vi) Determine if the hearing will be open to the public (parental choice).

(vii) Determine that the parent(s) have been provided with a copy of ~~Form EI-91-7~~ Early Intervention Child and Parent Rights.

(viii) Determine that the parties understand their rights pertaining to the hearing.

(ix) Utilize written correspondence to notify the parties of hearing procedures and schedules. Initial telephone calls shall be followed up with written notification.

(x) Obtain a list of representative(s) and witness(es) from each party at least five (5) calendar days prior to the hearing.

(xi) Determine that the parties have disclosed written evidence and witness(es) to each other at least five (5) business days prior to the hearing.

(xii) Inform the parties regarding the format of the hearing.

(xiii) Advise the parties of the confidential nature of the proceedings.

(xiv) Determine if witnesses should be sequestered (may be requested by either party).

(xv) Make sure that the physical arrangement of the hearing room is appropriate.

(xvi) Provide the parties involved written notice of any specific extension(s) beyond the forty-five (45) day hearing decision timeline.

(xvii) Make such rulings as necessary to conduct the hearings.

2. Hearing Activities. The Impartial Due Process Hearing Officer will conduct the hearing generally as outlined below:

(i) Call to order.

(ii) Opening statement by Impartial Due Process Hearing Officer.

(I) Introduction of himself/herself and principal parties.

(II) Opportunity for opening statement by each of the principal parties.

(III) Explanation of procedural matters.

(IV) Statement of issue(s) and purpose.

(V) Swearing in witnesses.

(VI) Sequestering of witnesses, if requested by either party.

(iii) Presentation of formal testimony.

(I) Explanation of format for presentation of evidence.

(II) Opportunity for opening statement by each of the principal parties. (This is not part of the evidence and will not be considered in the decision.)

(III) Presentation of written evidence by petitioner followed by the respondent. The written evidence may be presented all together or as needed during the oral testimony. The Impartial Due Process Hearing Officer will mark each document for identification purposes and shall return each exhibit entered into evidence to the Department of Rehabilitation Services.

(IV) Presentation of oral testimony by petitioner followed by the respondent. Oral testimony will be taken in the following order:

- I. Petitioner's Witness(es).
 - A. Examination by petitioner.
 - B. Cross-examination by respondent.
 - C. Re-examination by petitioner.
 - D. Recross-examination by respondent.
 - E. Further examination allowed at the Impartial Due Process Hearing Officer's discretion.
 - F. Questions by Impartial Due Process Hearing Officer.
 - II. Respondent's Witness(es).
 - A. Examination by respondent.
 - B. Cross-examination by petitioner.
 - C. Re-examination by respondent.
 - D. Recross examination by petitioner.
 - E. Further examination allowed at the Impartial Due Process Hearing Officer's discretion.
 - F. Questions by Impartial Due Process Hearing Officer.
- (iv) General Procedures Pertaining to the Hearing.

(I) Only a principal party or designated representative may question witnesses.

(II) The Impartial Due Process Hearing Officer may dismiss witnesses when it has been determined that no party has further need for them.

(III) The Impartial Due Process Hearing Officer may stop hostile or irrelevant pursuits in questioning.

(IV) If a principal party fails to appear, the Impartial Due Process Hearing Officer may hold the hearing, after noting in the record that proper notice was provided, or the hearing may be adjourned or postponed.

(V) If a witness fails to appear, the hearing can proceed with a notation in the record. If the evidence from the witness is required it may be taken at a later date. The hearing may be reconvened at a later time to obtain the testimony.

(VI) Upon the agreement of the parties, the testimony of a nonparty witness may be taken over the telephone.

(VII) Written evidence provided by a witness who does not appear may be accepted as fact if all parties agree.

(VIII) The Impartial Due Process Hearing Officer shall judge each request for a postponement and rule based on the merits of the request.

(v) Opportunity for summary statement by each of the principal parties. (This is not part of the evidence, and will not be considered in the decision.)

(vi) Closing statements by the Impartial Due Process Hearing Officer.

(I) When decision can be expected,

(II) Availability of the record of the hearing, and

(III) Appeal procedures.

3. Posthearing activities.

(i) The Impartial Due Process Hearing Officer shall:

(I) Include in the decision the following:

I. Procedural history,

- II. Statement of the facts,
- III. Issues presented,
- IV. Discussion of issues,
- V. Conclusions,
- VI. List of all documents introduced as exhibits,
- VII. Order,
- VIII. Appeal rights, including time limits on the filing of an appeal, and
- IX. Such matters deemed necessary by the Impartial Due Process Hearing Officer to issue a decision.

(II) Send copies of the written decision to all parties and to the Commissioner of Rehabilitation Services, Department of Rehabilitation Services, Attention: Early Intervention, ~~2129 E. South Boulevard, Montgomery, AL 36111-0586~~ by certified mail return receipt requested. After deleting any personally identifiable information the Commissioner of Rehabilitation Services shall transmit those findings and decisions to the Interagency Coordinating Council and make those findings and decisions available to the public.

(III) Submit all correspondence, evidence, hearing officer file or any other information collected during the hearing to the State Commissioner of Rehabilitation Services, Attention: Early Intervention for filing and safeguarding.

(i) Extension of Timeline. An Impartial Due Process Hearing Officer may grant specific extension(s) of time beyond the periods set for Impartial Due Process Hearings for good cause. Documentation of each extension must be submitted to the Department of Rehabilitation Services.

(k) Infant's or Toddler's Status During Impartial Due Process Hearing Procedure.

1. Subsequent to a request and during the pendency of any administrative or judicial proceeding, unless the agency or designated service provider and the parent(s) of the infant or toddler agree otherwise, the infant or toddler involved must continue to receive the appropriate early intervention services currently being provided.

2. If the issue involves an application for initial service, the infant or toddler, with the consent of the parent(s), must receive those services not in dispute.

(l) Follow-up of Impartial Due Process Hearing Decision by the State Department of Rehabilitation Services.

1. Not later than thirty (30) calendar days from the receipt of the Hearing Officer's written decision, the agency or designated service provider shall provide the State Department of Rehabilitation Services with written notice as to its/their intended response to those agency actions ordered by the Impartial Due Process Hearing Officer.

2. The State Department of Rehabilitation Services will review the written notice of intent and implement appropriate follow-up procedures to verify that all proper actions have been completed. These verification procedures shall be completed within a reasonable amount of time and may include an on-site investigation, if determined necessary.

3. If an on-site investigation is determined necessary, the agency or designated service provider will be notified prior to the on-site investigation regarding the nature of the review. The investigation will be conducted by a person(s) selected by the State Commissioner of Rehabilitation Services and will not be anyone who is employed by the agency or designated service provider under investigation. The person(s) conducting the investigation shall have complete access to all records of the agency that pertain to the early intervention program subject to the Impartial Due Process Hearing. After the on-site investigation, a letter of finding shall be sent to the agency or designated service provider.

(m) Civil Action. The decision made by the Impartial Due Process Hearing Officer is final unless a party brings a civil action pursuant to the Individuals with Disabilities Education Act.

(n) Timeline for Filing Civil Action. Any party has a right to file a civil action in accordance with time limits established by the federal or state court in which civil action is filed.

(4) Complaint Procedure. When an individual or organization believes that an agency or designated service provider has violated a federal law or regulation pertaining to an infant's or toddler's early intervention services, the early intervention complaint procedure may be utilized as the administrative remedy.

(a) Procedures for Filing a Complaint with the State Department of Rehabilitation Services.

1. A complaint may be filed:

(i) By writing to the State Commissioner of Rehabilitation Services, Attention: Early Intervention and copying the agency or direct service provider.

(ii) The complainant must:

(I) identify him/herself and

(II) provide the following information:

I. Child's name, if applicable,

II. Name of the agency or designated service provider,

III. Law or regulation or rule believed to have been violated,

IV. The specific acts pertaining to the complaint, and

V. Description of the efforts at the local level to resolve the issue(s).

(b) Procedures for Acting on Complaint.

1. The State Commissioner of Rehabilitation will promptly assign an Early Intervention Staff member to review and investigate each complaint. If it is determined that the complaint is a possible violation of federal law or regulation, the complaint will be processed. The Early Intervention Staff member will contact the complainant and give them an opportunity to submit additional information about the allegations in the complaint. If the complainant is the parent of an infant or toddler with a disability, the complainant may utilize mediation to attempt to resolve the complaint if the other party or parties (agency, early intervention service provider or the Alabama Department of Rehabilitation Services) agree to participate in mediation.

2. After the decision is made to process the complaint, the agency or designated service provider involved shall be notified promptly by telephone and a follow-up letter shall be mailed which will provide the identity of the complainant and the nature of the complaint.

3. The agency or designated service provider shall submit a written resolution statement, plan of action, or statement of position to the State Commissioner of Rehabilitation Services, Early Intervention, ~~2129 E. South Boulevard, Montgomery, AL 36111-0586~~ within thirty (30) calendar days from receipt of the complaint.

4. The Department of Rehabilitation Services will review the response and implement follow-up procedures to verify the complaint has been resolved. This may include an on-site investigation.

5. If an on-site investigation is determined to be necessary, the agency or designated service provider will be notified prior to the investigation regarding the nature of the review. The investigation will be conducted by a person(s) selected by the State Commissioner of Rehabilitation Services and will not be anyone who is employed by the agency or designated service provider under investigation. The person(s) conducting the investigation shall have complete access to all records of the agency and/or designated service provider that pertain to the early intervention program. The complainant shall have the right to submit additional information either orally or in writing about the allegations in the complaint. ~~After the on-site investigation, a letter of findings shall be sent to the agency and/or designated service provider and to the parent (subject to confidentiality requirements). This letter shall reflect that the investigator has reviewed all relevant information and has made an independent determination as to whether the agency and/or designated service provider has violated a requirement of applicable federal law or regulations. It shall address each allegation in the complaint and shall include findings of fact and conclusions and the reasons for the lead agency's final decision; procedures for effective implementation of the lead agency's final decision, and if needed, technical assistance activities, negotiations, and corrective actions to achieve compliance.~~

6. After the on-site investigation, a letter of findings shall be sent to the agency and/or designated service provider and to the parent (subject to confidentiality requirements). This letter shall reflect that the investigator has reviewed all relevant information and has made an independent determination as to whether the agency and/or designated service provider has violated a requirement of applicable federal law or regulations. It shall address each allegation in the complaint and shall include findings of fact and conclusions and the reasons for the lead agency's final decision; procedures for effective implementation of the lead agency's final decision, and if needed, technical assistance activities, negotiations, and corrective actions to achieve compliance.

7. Remedies for failure to provide appropriate services may include compensatory services or monetary reimbursement and appropriate future provision of services for all infants and toddlers with disabilities and their families.

6 8. The entire complaint process shall be completed within sixty (60) calendar days from receipt of the complaint. The Commissioner of the Department of Rehabilitation Services may grant an extension of time when it can be established that exceptional circumstances warrant delay with respect to a particular complaint.

9. If a written complaint is received that is also the subject of a due process hearing, or contains multiple issues of which one or more are part of the hearing, the Alabama Department of Rehabilitation Services must set aside any

part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint that is not a part of the due process hearing must be resolved using the time limit and procedures described above. If an issue raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties the due process hearing decision is binding on that issue and the Alabama Department of Rehabilitation Services must inform the complainant to that effect.

10. A complaint alleging that the Alabama Department of Rehabilitation Services, another public agency, or an Early Intervention Service provider's failure to implement a due process hearing decision must be resolved by the Alabama Department of Rehabilitation Services.

(5) Intra-Agency Dispute.

(a) An intra-agency dispute related to the provision of early intervention services shall be resolved through negotiations conducted within the agency. If a resolution cannot be reached, then the agency head shall make the final decision.

(b) An agency shall inform the lead agency, the State Department of Rehabilitation Services, immediately of an intra-agency dispute. An intra-agency dispute shall be resolved within twenty (20) calendar days of notifying the lead agency. The agency shall report in writing the resolution of the dispute to the lead agency.

(c) Unresolved intra-agency dispute.

1. If the agency is unable to resolve the dispute within the above time frame, it shall notify the lead agency. The lead agency shall contact the chairperson of the Interagency Coordinating Council to request that the Executive Committee meet to resolve the dispute.

2. Within forty-five (45) calendar days of receipt of the request by the chairperson of the Interagency Coordinating Council, the Executive Committee shall submit a report of the final decision to the State Department of Rehabilitation Services.

3. The lead agency through its supervision and monitoring component will ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities and the lead agency will ensure that all system of payment policies are adhered to during dispute resolution shall implement the procedures in 34 C.F.R. §303.525.

(d) Assignment of Financial Responsibility.

1. If the intra-agency dispute involves a question of financial responsibility or assignment of financial responsibility, then the lead agency shall:

(i) Assign financial responsibility to an agency, subject to the provisions of 34 C.F.R. Part 303 ~~§303.524 (b)(2)~~; or

(ii) Pay for the service in accordance with the "payor of last resort" provisions of 34 C.F.R. Part 303 ~~§303.527~~.

(iii) If, after the resolution of the dispute, the lead agency determines that the assignment of financial responsibility under 34 C.F.R. Part 303 ~~§303.524(b)(1)(i)~~ was made inappropriately, the lead agency shall:

(I) Reassign the responsibility to the appropriate agency; and

(II) Make arrangements for reimbursement of any expenditures incurred by the agency originally assigned responsibility.

(III) To the extent necessary to ensure compliance with its actions, the lead agency shall refer the dispute to the Interagency Coordinating Council, Executive Committee. The Executive Committee will assist in ensuring compliance within forty-five (45) calendar days of receipt of referral of the dispute.

(e) The decision of the lead agency or the Executive Committee, as the case may be, shall be final upon the affected agency(ies).

(6) Interagency Dispute.

(a) When an interagency dispute related to the provision of early intervention services exists, then the below resolution of dispute process shall be utilized.

1. Each agency shall appoint one (1) representative to serve on an interagency dispute resolution committee.

2. When a dispute arises, the parties involved shall submit to the lead agency, the State Department of Rehabilitation Services, written documentation which includes:

(i) The circumstances giving rise to the dispute,

(ii) Each party's reason(s) for its decision, and

(iii) Any other relevant information.

(iv) Each party shall submit sufficient copies of the documentation for the committee's use. Each party shall provide an additional copy to the State Department of Rehabilitation Services.

(v) Upon receipt of the documentation, the lead agency shall contact the committee.

(b) The committee shall meet and review the documentation within fifteen (15) calendar days. A report shall be submitted to the State Department of Rehabilitation Services, which shall include:

1. The decision, and
2. The effective date of the decision.

(c) Unresolved Interagency dispute.

1. If the committee is unable to resolve the dispute, then the report to be submitted to the State Department of Rehabilitation Services, shall include:

- (i) A synopsis of the findings,
- (ii) The suggested resolution and the reason(s) it was unacceptable.

2. Once the lead agency has received the above report, it shall furnish the documentation to the chairperson of the Interagency Coordinating Council with a request that the Executive Committee meet to resolve the dispute. Within forty-five (45) calendar days of receipt of the request by the Chairperson, the Executive Committee shall submit a report to the State Department of Rehabilitation Services which includes:

- (i) The final decision, and
- (ii) The effective date of the decision.

(d) Financial Matters. If the dispute involves a question of financial responsibility or assignment of financial responsibility, then the lead agency shall:

1. Assign financial responsibility to an agency, subject to the provisions of 34 C.F.R. Part 303 §303.524(b)(2); or

2. Pay for the service in accordance with the "payor of last resort" provisions of 34 C.F.R. Part 303 §303.527.

3. If, after the resolution of the dispute, the lead agency determines that the assignment of financial responsibility under 34 C.F.R. Part 303.524(b)(1)(i) was made inappropriately, the lead agency shall:

(i) Reassign the responsibility to the appropriate agency; and

(ii) Make arrangements for reimbursement of the appropriate expenditures incurred by the agency originally assigned the responsibility.

(iii) To the extent necessary to ensure compliance with its action, the lead agency shall refer the dispute to the Interagency Coordinating Council, Executive Committee. The Executive Committee will assist in ensuring compliance within forty-five (45) calendar days of receipt of referral of the dispute.

(iv) The lead agency through its supervision and monitoring component will ensure that no services that a child is entitled to receive are delayed or denied because of disputes between agencies regarding financial or other responsibilities and the lead agency will ensure that all system of payment policies are adhered to during dispute resolution ~~Implement the procedures in 34 C.F.R. §303.525.~~

(e) The decision shall be final upon the agency.

Author: Alabama Board of Rehabilitation Services.

Statutory Authority: 20 U.S.C. §1431, ALA. CODE 1975 §21-9-9, et seq., 34 C.F.R. §301.1 et seq.

History: Adopted by Reference in Alabama Administrative Code Rule 795-3-1-.01 Emergency adoption filed January 17, 1995; effective January 18, 1995. Permanent adoption filed April 13, 1995; effective May 18, 1995. Amendment filed July 25, 1995; effective August 29, 1995. Amendment filed November 18, 1997; effective March 17, 1998. Amendment filed May 20, 1998; effective August 26, 1998; Emergency Amendment effective April 6, 2000; Permanent Amendment filed May 19, 2000. Permanent Amendment adoption filed July 14, 2000; effective August 18, 2000; Amendment: filed February 11, 2011; effective May 27, 2011; Amendment filed April 20, 2012.