

North Carolina Infant-Toddler Program Procedural Guidance

Reference: Procedural Safeguards Policy

Parental Access to Records

Introduction

The parents of infants or toddlers have the right to access all information generated and used by service providers to comply with requirements of the Infant-Toddler Program, except for that which may be excluded by state law (see “2.c)” for exclusions). This includes information generated during referrals to the Infant-Toddler Program and the delivery of any and all required Infant-Toddler Program services. Required services include educational as well as medical and health related services. For a listing of these services, see the Policy on Infant-Toddler Program Services.

Definitions

Infant-Toddler Program record means any personally identifiable information in electronic, typed, printed, or handwritten form about a child or the child’s family which is generated by service providers, and which pertains to referral, eligibility determination, evaluation, assessment, development of an Individualized Family Service Plan, and the delivery of early intervention services. Records include information typically retained in a client record.

- Records may also include, but not be limited to: files, reports, studies, letters, minutes of meetings, memoranda, summaries, handwritten or other notes, charts, graphs, data sheets, financial eligibility information, billing and reimbursement information, and information stored on microfilm or microfiche or in computer-readable form.
- Because the North Carolina Infant-Toddler Program is a multi-provider program, all relevant and covered information may not be contained in one service provider’s record on the child, but may be contained in the records of several service providers.

Personal notes made by service providers, kept in the sole possession of the maker, used only as a personal memory aid, which are not made accessible or revealed to any other person, are not subject to the Family Educational Rights and Privacy Act. These sole possession notes are not part of the Infant-Toddler Program record.

Parent: The confidentiality rights and protections and opportunity to examine records are available to an individual who meets the definition of parent (*see Policy on Procedural Safeguards and the Procedural Guidance on Surrogate Parent*), which includes foster parents, and any individual appointed as a surrogate parent.

Procedures

The following procedures must be followed by the Children's Developmental Services Agency and all enrolled Infant-Toddler Program service providers.

1. Accessing and Examining Records

Parents of infants or toddlers have the right to:

- A. examine, inspect and review all Infant-Toddler Program records related to their child and family, including records relating to evaluations and assessments, medical and health information, eligibility determination, development and implementation of Individualized Family Service Plans, provision of early intervention services, individual complaints involving the child, and any other areas under the Infant-Toddler Program involving records about the child and family regardless of who originated the information, except for information that may be excluded by state law,
- B. inspect and review records related to his child and family in no case more than ten (10) calendar days after the request has been made and prior to any Individualized Family Service Plan meeting or hearings related to the child's identification, evaluation, or placement.
- C. receive a response from a service provider to a reasonable request for explanation or interpretation of the records;
- D. request that a service provider provide copies of the records containing information within ten (10) calendar days of the parent's request, if failure to provide copies of information would effectively prevent the parent from exercising his right to inspect and review records, e.g., if the parent is unable to view the records at the agency because of distance, illness or disability, if the parent requires the assistance of legal counsel to review the records, if the parent requires the assistance of a translator or interpreter to fully understand the records;
- E. require that a fee not be charged to the family for a service provider to search for or to retrieve information; however, service providers may charge a fee for copies of records, which are made for the parent, if the fee does not effectively prevent the parent from exercising his right to inspect or review those records. The North Carolina Infant-Toddler Program will provide to the parent one copy of the record, free of charge;
- F. have a representative of the parent, at the parent's request, inspect and review the child's records;
- G. require that a service provider not destroy any records, if there is an outstanding request to inspect and review the records, and
- H. request that a service provider provide a list of the types and location of records collected, maintained, or used by that service provider. This includes the title and address of the person to whom requests to review such records should be made.

2. Service Provider Responsibilities Regarding Access and Examination of Records

In addition to ensuring that child and family rights are protected as written above, service providers:

- A. must verify the identification of the requester;

- B. must have the parent sign a written authorization granting access to the information in the record for anyone accompanying the parent during the review (e.g., friend, advocate, counsel, language interpreter), including a description of what information this person may have access to;
- C. may disallow the parent access to information in the child’s record (but only after review of this decision by the supervisor of the person making this decision unless the person making the decision to disallow access is the director of the agency or the service provider is an individual practitioner) under the following circumstances:
 - i. information originating from another source, who has imposed restrictions on its access or release;
 - ii. information that would breach the confidentiality of another individual, and
 - iii. information that is deemed by the service provider to be potentially harmful to the client.
- D. must remain with the parent during the review to make sure the parent understands the contents of the record, answer questions about the contents or about policies regarding record review and amendment, refer the parent to the appropriate person(s) if the parent has further questions about the contents of the record, and ensure the record is returned to its secure location after the review;
- E. may presume that a parent has authority to inspect and review records related to his child unless the service provider has been advised that the parent does not have authority under applicable state law governing such matters as guardianship, separation, and divorce;
- F. must ensure that a parent only inspects and reviews the information on his own child and family, if a record includes information on more than one child;
- G. must document the parent’s request to access the record and the actual access of the record, including the date of the request, the date the parent accessed the record, and actions related to the parent’s exercise of any of the rights related to record access listed above. Whenever a parent accesses his child’s record, documentation of this access must be made on the *North Carolina Children’s Infant-Toddler Program Accounting of Release/Disclosure and Record Access* form.
- H. must document any information that was withheld, if any information was withheld, inform the parent that information was withheld and upon which circumstance the decision to withhold information was based.

3. Amending and Correcting Records

IDEA requires that a parent who believes that information in his/her child’s records, that has been collected, maintained, or used, is inaccurate or misleading or violates the privacy or other rights of the child or parent may request that the participating agency that maintains the information amend the information.

The participating agency must decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request. See NC Infant-Toddler Program (ITP) procedures below.

If the participating agency refuses to amend the information in accordance with the request, it must inform the parent of the refusal and advise the parent of the right to a hearing.

NC ITP requires that the service provider must document the parent’s request to amend information, the date of the request, and any actions related to the procedures listed below. Specific steps include:

- A. Verify the content of the requested amendment with both parties. Parents have a right to have any information in a record fully explained to them. Negotiation and good communication between all parties enhance future work together.
- B. If the service provider is a multi-practitioner agency, the agency director must designate someone from the agency to process the request for amendment from a parent and to oversee amendment of the record, as appropriate.
- C. The EI service provider decides whether to amend the information in accordance with the parent's request and notifies the parent in writing of this decision within ten (10) calendar days of the receipt of the request.
 - i. If the EI service provider decides to amend the information, he must do so within ten (10) calendar days of notifying the parent of his decision.
 - ii. The EI service provider may refuse to amend the information if the EI service provider did not create the information or if the service provider deems the information to be accurate and complete.
- D. If the EI service provider decides to refuse to amend the information in accordance with the request, he informs the parent of:
 - i. the denial decision in writing,
 - ii. the reason for the denial decision,
 - iii. the parent's right to place a corrective statement in the record commenting on the information or setting forth any reasons for disagreeing with the information,
 - iv. the parent's right to request that the request for amendment together with the denial be included in future releases of information if the parent does not submit a corrective statement, and
 - v. the parent's right to complaint resolution along with the procedure for filing a formal complaint.
- E. The service provider may respond to the parent's statement of disagreement with a written rebuttal statement. A copy of this rebuttal statement must be provided to the parent.
- F. If the parent wishes to file a formal complaint, the service provider notifies the Children's Developmental Services Agency, who will facilitate and assist the parent with the complaint resolution process. This complaint resolution process follows the requirements under Dispute Resolution. *(For additional information, see Policy on Dispute Resolution.)*
- G. If the outcome of the complaint resolution process is that the information is determined to be inaccurate, misleading, or otherwise violates the privacy or other rights of the child and family, the service provider amends the information accordingly and informs the parent in writing. See item I for instructions on amending the record.
- H. If the complaint resolution process determines that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child and family, the service provider allows the parent, if he wishes, to place in the record a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the complaint resolution process.

- I. If the service provider agrees to correct information or is required to do so as a result of the complaint resolution process, the service provider amends the information by crossing through the incorrect information with a single line, handwriting the correct information above the words that are crossed through, and initialing and dating the correction. If the information is in a report, the report may be reprinted so that the corrections no longer appear in the report, but the original report should be identified and maintained in the child's record, but never released. If the original information has been released, then the corrected information along with any other required documentation must be sent, with written parental authorization, to any parties receiving the original with an explanation to amend their records accordingly.
- J. If the service provider agrees to allow the parent to place a corrective statement in the record or is required to do so as a result of the complaint resolution process, the service provider must attach this statement to the contested information. If the original has been released, then the information with the attached corrective statement along with any other required documentation must be sent, with written parental authorization to any parties receiving the original with an explanation.
- K. Any explanation or statement placed in the record of the child is maintained by the service provider as long as the child's record or contested portion of the record is maintained by the service provider and is disclosed by the provider if the record or contested part of the record is requested by any party. Copies of any of the following that is generated as part of the amendment process must be appended to the disputed information in the child's record for record keeping purposes:
 - i. the parent's request for amendment,
 - ii. the provider's denial,
 - iii. the parent's corrective statement,
 - iv. the rebuttal statement by the provider, and
 - v. the results of the complaint resolution.