

Tennessee's Early Intervention System
(TEIS) Information and Guidance (IAG)

TO: Tennessee's Early Intervention Staff
FROM: Tennessee's Early Intervention Central Office
DATE: May 15, 2017
SUBJECT: IAG#17-009
Procedural Safeguards and Prior Written Notice

Procedural Safeguards

Procedural safeguards are provisions protecting the rights of parents of infants and toddlers with disabilities (and the infants and toddlers themselves) regarding appropriate early intervention services. Procedural safeguards include parental rights to:

- inspect and review educational records;
- receive timely administrative resolution of complaints;
- maintain confidentiality of personally identifiable information;
- receive prior written notice in their native language when the lead agency or an early intervention services provider proposes to initiate or change—or refuses to initiate or change—the identification, evaluation, or placement of their infant or toddler or the provision of early intervention services to their infant or toddler;
- receive a procedural safeguards notice, which is a comprehensive written explanation of the IDEA's legal rights and protections for infants and toddlers with disabilities and their parents;
- resolve disputes through a mediation process;
- determine whether they, their infant or toddler, or other family members will accept or decline any early intervention services without jeopardizing other early intervention services; and
- continue receiving appropriate early intervention services for their infant or toddler, during the pendency of any proceeding or action involving a complaint filed on their family's behalf.

The rights of infants and toddlers determined eligible for TEIS are outlined in the brochure titled *"The Rights of Infants and Toddlers with Special Needs: Eligibility for Tennessee's Early Intervention System."* However, children (or parents of children) who have been referred to TEIS but are not yet determined eligible are also afforded many of the rights of eligible individuals, such as the right to a timely evaluation of eligibility, the right to refuse screenings or evaluations, the right to confidentiality, the right to copies or review of their child's early intervention records, etc.

Prior Written Notice

The *Prior Written Notice* form is the mechanism by which TEIS provides parents with advance written notice of an action or activity impacting their child's rights. Parental right to prior written notice is a crucial procedural safeguard.

The *Prior Written Notice* form must be provided to parents within a "reasonable" timeframe before the lead agency or an early intervention services provider proposes, or refuses, to initiate or change the identification, evaluation, or placement of an infant or toddler, or the provision of early intervention services to an infant or toddler with a disability. In Tennessee, "reasonable" time is defined as **ten calendar days**.

The form outlines several situations in which TEIS would need to provide parents advance notice of their rights as follows.

- The child was determined ineligible for TEIS services.
 - If an infant or toddler is not found eligible for early intervention services, the lead agency must provide the parent with prior written notice that includes information about the parent's right to dispute the eligibility determination.
- Evaluation for continued eligibility
 - This is most likely used when a child is eligible under prematurity guidelines only and continued eligibility must be determined.
- Notice of file closure for eligible child
 - As outlined in the file closure guidance section of the TEIS Operations Manual for Field Staff, eligible children have a right to advance notice of file closure of ten calendar days. The *Prior Written Notice* form would accompany the letter informing the family of the impending closure if no contact is received. If the parent signs and returns the *Prior Written Notice* form to TEIS, and initials and dates the box waiving their right to ten day notice, the file may be closed as of the date of their signature.
- A parent declines action recommended by the IFSP team (e.g., evaluation for eligibility or service, change in service)
 - If a parent declines a service the IFSP team recommends as necessary to meet their child's goals, the parent must be provided with notice of their right to request the service at a later date and that declining the service will not jeopardize the provision of other services.
- TEIS denies an action requested by a parent
 - This is used when the parent requests an action or service that is either outside the scope of early intervention services or there is insufficient justification based on the child's assessments and goals for the IFSP team to agree to the proposal. This notifies parents of their rights and procedures for filing a complaint.

- IFSP meeting is held less than ten days from notice
 - Parents have the right to reasonable (ten-day) timely written notice of IFSP team meetings. The meeting may occur less than ten days from notification if the parent signs the *Prior Written Notice* form and initials and dates the box indicating they waive their right to timely notification.
- For other situations not covered by the list above, TEIS may utilize the “Other” box on the *Prior Written Notice* form and provide explanation of the family’s rights for which they are providing notice.