

## **CHAPTER 7: PROCEDURAL SAFEGUARDS**

REVISION DATES: 07/01/2021, 12/14/2018 EFFECTIVE DATES: 04/01/2022, 07/01/2019  
INTENDED USER(S): All ADES/AzEIP personnel, AzEIP Service Providing Agencies including all employees, contractors, subcontractors, and volunteers.

REFERENCES/AUTHORITY: 20 U.S.C. §1401(23); 34 C.F.R. Part 99; 34 C.F.R. §303.7, -.27 123, -.400, -.403, and -.449; 34 C.F.R. §99.3, 20 U.S.C. §§1232g, 1439(a)(2), and 1442; 34 C.F.R. §303.401-402, 34 C.F.R. 303.404, 20 U.S.C. §1232, et seq. (FERPA) and 34 C.F.R. §303.405 -413., 34 C.F.R. §303.405-409, 34 C.F.R. §303.410-411, 34 C.F.R. §303.401(d)(1), -.414-.415; 34 C.F.R. 99.30(d), 34 C.F.R. §303.416; 20 U.S.C. 1232f; 34 C.F.R. Parts 76 and 80, 34 C.F.R. §420, 20 U.S.C. §§1439(a)(6) and (7); 34 C.F.R. §§303.21 and 303.421, 20 U.S.C. §1439(a)(5); 34 C.F.R. §§303.27; -.422, 20 U.S.C. §1439; 34 C.F.R. §§303.401-449, 20 U.S.C. §1415(e); 34 C.F.R. §303.431, 34 C.F.R. §303.438, 34 C.F.R. §§303.430; 435. 34 C.F.R. §§303.432-434

### **7.0 Introduction**

- 7.0.1 Under the Individuals with Disabilities Education Act (IDEA), parents have legal rights called procedural safeguards.
- 7.0.2 Procedural safeguards represent one of the most important protections for children and families within the early intervention system. Federal regulations recognize that families need to be involved personally every step of the way. Providing families with their rights helps to ensure that families are involved in the decision-making process regarding services for their child. Rather than being a stand-alone activity, procedural safeguards are best offered to families within the process of participation.
- 7.0.3 ADES/AzEIP implements the following policies and procedures and enforces the failure to comply with these requirements and the requirements in IDEA, Part C through its dispute resolution processes and use of sanctions outlined in Chapter 2, General Supervision.

### **7.1 Definitions**

- 7.1.1 AzEIP Service Providing Agencies- Those state agencies identified in A.R.S. § 8-652 that provide early intervention services under IDEA, Part C: Arizona Department of Economic Security and the Arizona State Schools for the Deaf and the Blind. The Arizona Department of Economic Security provides early intervention services through the ADES/ Arizona Early Intervention Program (ADES/AzEIP) and the ADES/ Division of Developmental Disabilities (ADES/DOD).
- 7.1.1 As used in this chapter, AzEIP service providing agencies include all employees, contractors and other individuals associated with the EIP, who are involved with children and families, either directly or indirectly, referred to and/or eligible for AzEIP.

7.1.2 Consent is when:

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

7.1.3 Destruction physical destruction of the record or ensuring that personal identifiers are removed from a record so that the record is no longer personally identifiable.

7.1.4 Disclosure to permit access to, or the release, transfer, or other communication of personally identifiable information contained in early intervention records, to any party, except the party that provided or created the record, by any means, including oral, written, or electronic.

7.1.5 An ADES/AzEIP contracted region for team-based early intervention services (TBEIS) that includes the early intervention professionals working with one AzEIP TBEIS contractor, and the DOD services coordinators and ASDB Teachers of the Visually Impaired and Teachers of the Deaf/Hard of Hearing working as part of the team.

7.1.6 Early Intervention Record means the educational records regarding a child that are required to be collected, maintained, or used in AzEIP. Records include, but are not limited to, handwritten documents or notes, print, computer data, video or audio, tape, film, microfilm and microfiche. Early Intervention Records are maintained by AzEIP or an EIP for the purpose of providing early intervention services. Financial information is not included in the definition of "early intervention records." All records regarding a child that are required to be collected, maintained, or used in AzEIP. Records include, but are not limited to, handwritten documents or notes, print, computer data, video or audio tape, film, microfilm, and microfiche.

7.1.7 Native language, when used with respect to an individual who has limited English proficiency (LEP):

- A. the language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child, except as provided in B. below

- B. for evaluations and assessments, the language normally used by the child, if determined developmentally appropriate by qualified personnel conducting the evaluation or assessment.

Native language, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, braille, or oral communication).

7.1.8 Natural Environments settings that are natural or typical for a same- aged child without a disability, and may include the home or community settings, such as the park, restaurant, or childcare provider. Early intervention services must, to the maximum extent appropriate, only be provided in settings the natural environment and may only be provided in settings other than the natural environment when it is determined by the parent and the IFSP team that the outcomes identified on the IFSP cannot be met in a natural environment. In the rare situations where the team decides that the child cannot meet an outcome in a natural environment, a justification, including the reason for the decision, as well as a plan and timeline for providing the service in a natural environment, must be included in the IFSP.

7.1.9 The parent is the individual who makes early intervention decisions, including whether or not to participate in AzeIP, consent to screening, evaluation, assessment, consent to the provision of services, and consent to share early intervention records for a child. The parent is defined as:

- A. A biological or adoptive parent of a child
- B. A foster parent, unless Arizona law, regulations, or contractual obligations with an Arizona or local entity prohibit a foster parent from acting as a parent
- C. A guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health, or developmental decisions for the child (but not the State if the child is a ward of the state)
- D. A person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or a person who is legally responsible for the child's welfare
- E. A surrogate parent who has been appropriately appointed.

7.1.10 Personally Identifiable Information (PII) includes, but is not limited to, the following:

- A. The name of the child, the child's parent or other family member
- B. The address of the child or family
- C. A personal identifier, such as the child's or parent's social security number or child number

- D. A list of personal characteristics or other information that would make it possible to identify the child with reasonable certainty
- E. Other information that would make it possible to identify the child with reasonable certainty.

## **7.2 Confidentiality**

- 7.2.1 Parents referred to AzEIP are afforded the right to confidentiality of personally identifiable information, including the right to written notice of, and written consent to, the exchange of that information among agencies, consistent with state and federal laws.
- 7.2.1 AzEIP's confidentiality policy and procedures apply to the personally identifiable information of a child and the child's family:
  - A. Contained in early intervention records collected, used, or maintained by ADES, an AzEIP service providing Agency, or an EIP
  - B. From the date the child is referred for early intervention services until the later of when ADES, the AzEIP service providing agency, or the EIP is no longer required to maintain or no longer maintains that information under applicable federal and state laws.
- 7.2.2 ADES/AzEIP ensures the protection of the confidentiality of any personally identifiable data, information, and records collected, or maintained by AzEIP, which includes, ADES, the AzEIP service providing agencies, and the EIP.
- 7.2.3 AzEIP's policy for protecting the privacy of children and families is aligned with the Family Educational Rights and Privacy Act (FERPA), as required under IDEA, 34 C.F.R. §303.401, and which is incorporated herein by reference.
- 7.2.4 Early intervention records may contain sensitive or extraneous information that does not directly relate to the provision of early intervention services, such as information contained in medical records or documents from the Department of Child Safety (DCS). When disclosing or re-disclosing any information, the EIP must ensure the disclosure includes only information responsive to the request and must alert the parent should sensitive or extraneous information be contained in information being requested by another entity. (For example, an IFSP is appropriate to share, while a physician's report or social service report may not be necessary or appropriate to share with another early childhood program.)
- 7.2.5 When a service providing agency operates other programs in addition to an approved early intervention program, which follow other documentation and/or confidentiality requirements, early intervention records are subject to and must meet the requirements of all applicable early intervention-related federal and state laws and regulations. Under these circumstances, early intervention records must be maintained as distinct or removable from non- early intervention

records. These records (paper, electronic, etc.) may not be shared or otherwise made available to the other programs without following all of the confidentiality requirements under IDEA, Part C, including FERPA. It is the responsibility of the EIP to ensure the confidentiality of information regarding AzEIP eligible children they are serving.

7.2.6 The designated AzEIP service coordinator maintains the child's entire record and ensures that all required documentation/information is included in the record.

7.2.7 The AzEIP service coordinator may communicate about a child and family referred to early intervention with a DCS worker, without consent from the early intervention parent, upon receipt of a written request from DCS noting the DCS worker's name, the child's name, and the information requested. Consent from the parent is required for all other communication to entities involved with a DCS case, such as behavioral health providers, parent aides, etc.

### 7.3 **Notice to Parents**

7.3.1 AzEIP ensures notice to a parent of a child referred to AzEIP that is adequate to fully inform the parent about the confidentiality requirements in 7.2, including:

- A. a description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information
- B. a summary of the policies and procedures that are followed regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information
- C. a description of all the rights of parents and children regarding this information, including their rights under IDEA, Part C confidentiality provisions
- D. a description of the extent that the notice is provided in the native languages of the various population groups in the state.

7.3.2 The Service Coordinator ensures a parent is provided and has access to the AzEIP family rights handbook, which outlines AzEIP's policies and procedures about confidentiality.

7.3.3 Parents are notified at a minimum annually, through the family rights handbook, of their right to:

- A. inspect and review their child's records, including the procedures to exercise this right
- B. seek amendment to the records, including the procedures to exercise this right

- C. consent to disclosures of personally identifiable information in their child's records
- D. file a complaint with the United States of Department of Education, Family Policy Compliance Office concerning alleged failures to comply with the requirements under FERPA.

#### 7.4 **Records**

7.4.1 An EIP may use electronic records, including electronic signatures, in accordance with IDEA, Part C, FERPA and other applicable federal and state laws. Electronic records must be maintained in a system that (i) allows a parent to inspect and review the records; and (ii) allows the records to be printed. No State agency (ADES/ODD or ASDB) may use electronic records without the appropriate state governmental approval and coordination with ADES/AzEIP.

7.4.1 For Medicaid audit purposes, electronic documentation must be maintained in such a manner that Medicaid audit staff can answer basic questions to determine whether the requirement to prepare and maintain contemporaneous records that demonstrate the provider's right to receive payment under the Medicaid program has been met. These questions include:

- A. Does the record itself meet the general and specific requirements of the regulations as to content?
- B. Is it possible to determine when the record was created?
- C. Is there a process to prevent records from being altered after they are created?
- D. If records can be altered, is the alteration process documented?
- E. Is the actual caregiver identified in the record?
- F. If entries are menu driven, are they appropriate to the service provided and is the caregiver identified as having selected the entry?
- G. Has the provider set up a system of internal controls that ensures that actual completed service delivery drives Medicaid billing?
- H. Are the records accessible? Records should be maintained in the ordinary course of business so that no "special" programming, software, language, etc., is required to access them.

In general, if an EIP is able to answer these questions about their record keeping system positively, the system would meet the requirements for review of Medicaid billings. Scanned documents, when consistent with the above requirements, are also generally acceptable for Medicaid record- keeping purposes.

7.4.2 For purposes of commercial insurance billing, when an EIP directly bills commercial insurers electronically, records must be maintained electronically in a system that allows the records to be printed if necessary for audit purposes. If the EIP maintains a billing service to pursue reimbursement from third party plans, there must be an electronic record of the documents transmitted to the billing service. When billing third party

payors, billing services must maintain records, either hard copy or electronic, that meet these requirements.

It should be noted that when in effect, the Health Insurance Portability and Accountability Act (HIPAA) requires that claims submitted electronically must be in accordance with HIPAA standards.

#### 7.4.3 Rights to Access of Records

- A. A parent is entitled to inspect and review any early intervention records relating to his/her child that are collected, maintained, or used by ADES, an AzEIP service providing agency, or an EIP (collectively the "agency" when used throughout this section). The EIP must comply with the parent's request to inspect and review records without unnecessary delay and before any IFSP meeting or IDEA, Part C dispute resolution proceedings, and in no case more than ten (10) calendar days after the request has been made.
- B. The right to inspect and review early intervention records includes the right to:
  - 1) a response to reasonable requests for explanation and interpretation of the early intervention records
  - 2) request that the agency provide copies of the early intervention records containing information if failure to provide the copies would effectively prevent the parent from exercising the right to inspect and review the records
  - 3) have a representative of the parent inspect and review the early intervention records.
- C. The agency may presume that the parent has authority to inspect and review records relating to his or her child while the child is in early intervention, unless the agency has been provided documentation that the parent does not have authority under applicable state laws governing such matters as custody, foster care, guardianship, separation, and divorce.
- D. If an early intervention record includes information on more than one child, the parent has the right to inspect and review only information relating to his/her child or to be informed of that specific information.
- E. An EIP must provide at no cost to a parent a copy of each evaluation, child assessment, family assessment, and IFSP, as soon as possible after each IFSP meeting, but no later than ten business (10) days after completion of the event.
- F. Reasonable fees may be charged for copying records, other than those described in E, requested by a parent if the fee does not effectively prevent the parent from exercising his or her right to inspect and review the

records. Fees may not be charged to a parent for the search and/or retrieval of the records.

- G. When a request for records is made by a parent of a child who is no longer in AzEIP, the EIP will take reasonable steps to ensure the individual requesting the record has the legal authority to obtain the records, including ensuring the request is in writing and signed by the early intervention parent.
- H. Agencies must keep a record of parties who obtain access to early intervention records collected, maintained, or used under IDEA, Part C (except access by parents and authorized representatives and employees of ADES or the EIP), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.
- I. ADES/AzEIP ensures that each agency will provide a parent, on request, a list of the types and locations of early intervention records collected, maintained, or used.

#### 7.4.4 Amendment to Records

- A. A parent who believes information in the early intervention records collected, maintained, or used by an EIP is inaccurate, misleading, or violates the privacy or other rights of the child or parent may request that the EIP that maintains the information amend the information.
- B. Upon receipt of a request to amend an early intervention record, the EIP must decide whether to amend the information in accordance with the request within a reasonable period of time, but no later than ten (10) calendar days from the request.
- C. If the EIP refuses to amend the information as requested by the parent, it must inform the parent of the refusal, in writing, and advise the parent of the right to a hearing.
- D. A parent may request a hearing to challenge the information in their child's early intervention records to ensure that it is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parents. The parent may request one of two hearings:
  - 1) a due process hearing as set out in the policies and procedures found in 7.9.7
  - 2) a hearing that meets the following requirements:
    - a. held by ADES/AzEIP within 30 days after it has been requested
    - b. the parent is provided notice of the date, time, and place of the hearing within a reasonable time prior to the hearing

- c. the hearing is conducted by an individual, including an official of ADES/AzEIP, who does not have a direct interest in the outcome of the hearing
- d. ADES/AzEIP gives the parent a full and fair opportunity to present evidence relevant to the issues raised in the request to amend the record. The parent may, at his/her own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney
- e. ADES/AzEIP makes its decision in writing within a reasonable time after the hearing
- f. the decision must be based solely on the evidence presented at the hearing and must include a summary of the evidence and the reason for the decision.

#### 7.4.5 Consent to Disclose Records

- A Prior parental consent must be obtained before personally identifiable information is:
  - 1) disclosed to anyone other than authorized representatives, officials, or employees of ADES or an AzEIP service providing agency, collecting, maintaining, or using the information under IDEA, Part C; or
  - 2) used for any purpose other than meeting a requirement under IDEA, Part C.
- B. Exceptions to the requirement of parental consent are:
  - 1) the automatic referral requirements when a child is potentially eligible for preschool special education and a referral is made using the PEA Notification/Referral form
  - 2) those exceptions listed in FERPA, 34 C.F.R. §99.31, including but not limited to:
    - a. when a child moves and changes early intervention providers, the early intervention records may be sent from one early intervention provider to another without the parent's consent
    - b. disclosure to ADES/AzEIP
    - c. disclosure to comply with a judicial order or lawfully issued subpoena, but only after the EIP makes a reasonable effort to notify the parent in advance of compliance with the judicial order to allow the parent to seek protective action
    - d. the disclosure is in connection with a health and safety

emergency to appropriate authorities to protect the health or safety of the child or other individuals.

- C. An EIP may use a digital electronic signature (also referred to as an advanced or secure electronic signature) for consents (and other early intervention signatures) when the EIP meets the following authentication criteria:
- 1) identifies and authenticates the early intervention parent
  - 2) attributes the signature to the consent
  - 3) secures and verifies the integrity of the consent in transmission and upon receipt
  - 4) documents and records the signed message
  - 5) maintains the electronic signature as part of the early intervention record.
- D. The following guidelines apply to the use of digital electronic signatures:
- 1) the individual whose name is on the electronic signature and the EIP bear the responsibility for authenticity
  - 2) EIP's should check with their attorneys and malpractice insurers regarding these alternate signature methods
  - 3) each EIP must develop written policies and procedures to assure complete, accurate, and authenticated records and at a minimum include the following:
    - a. Security provisions to protect the use of an electronic signature by anyone other than the person to which the electronic signature belongs
    - b. The privacy and integrity of the record is protected
    - c. A list of which records will be maintained and signed electronically
    - d. How a digital electronic code is assigned and how the code and associated staff identity are protected
    - e. How passwords are assigned and the frequency for which they are changed
    - f. Allows the parent access to his records
    - g. Allows immediate access to records by ADES, and others who are authorized by law.
  - 4) As required by HIPAA for billing purposes, the EIP must assure that the software program they are using is set up so that:

- a. The signer cannot deny having signed the document in the future
  - b. There is verification of the signer's identity at the time the signature was generated
  - c. Certainty that the document has not been altered since it was signed.
- 5) A graphical signature, which is an identical image of a person's handwritten signature) is not permitted.
- E. A consent to release confidential information is only valid for 12 months.
- F. When records are released, EIP's may only disclose personally identifiable information on the condition that the individual to whom the information was disclosed will not disclose the information to any other person without prior consent of the parent, unless as required by an exception under FERPA, such as a court order or subpoena.
- G. When medical records or other "protected health information" are placed into a child's early intervention record, it is covered by the privacy protections of FERPA, and no longer covered by the HIPAA. HIPAA expressly excludes those records that are part of a child's early intervention records in its definition of "protected health information." 45 C.F.R. §160.103.
- H. ADES, the AzEIP service providing agencies, and the EIP's protect the confidentiality of personally identifiable information at the collection, maintenance, use, storage, disclosure, and destruction stages and ensure the following requirements are met:
- 1) one official at each agency is designated as the Confidentiality Manager, assuming responsibility for ensuring the confidentiality of any personally identifiable information
  - 2) all persons collecting or using personally identifiable information are trained and instructed on AzEIP policies and procedures regarding the confidentiality of this information
  - 3) a current list of the names and positions of the employees within the agency who have access to personally identifiable information is maintained for public inspection.

## **7.5 Destruction of Information**

- 7.5.1 The EIP must inform parents when personally identifiable information collected, maintained, or used in AzEIP is no longer needed to provide services to the child and family under IDEA, Part C.
- 7.5.2 Subject to 7.5.1. above, personally identifiable information must be destroyed at the request of the parents. However, a permanent record of a child's name, date of birth, parent contact information (including address and phone number), names of Service Coordinator(s) and early intervention service providers, exit data (including year and age upon exit), and the request for destruction may be maintained without time limitation.

## 7.6 **Address Confidentiality Program**

7.6.1 The Address Confidentiality Program (ACP) is a program that helps prevent victims of domestic violence, sexual offenses, and/or stalking from being located by the perpetrator through public records. The program provides a substitute address and confidential mail forwarding services to individuals and families across Arizona. The EIP must ensure adherence to Arizona's Address Confidentiality Program (ACP) to ensure that any enrolled family's address is at no time documented in the ADES data system(s) or any other data systems, files, emails, be included in the child's record, or any public records. The EIP must ensure compliance with the ACP law, ADES policies, and AzEIP policies and procedures.

## 7.7 **Parental Consent and Ability to Decline Services**

7.7.1 Parental consent must be obtained before:

- A. administering screening procedures to determine whether a child is suspected of having a developmental delay or disability
- B. evaluating a child to determine eligibility
- C. conducting child and family assessments
- D. providing early intervention services to the child and family
- E. using public benefits or insurance or private insurance if such consent is required
- F. disclosing personally identifiable information.

7.7.2 If a parent does not give consent, reasonable efforts are made to ensure the parent:

- A. is fully aware of the nature of the evaluation and assessment of the child and family, or early intervention services that would be available
- B. understands that the child will not be able to receive the evaluation, assessment, or early intervention services unless consent is given.

7.7.3 Due process procedures will not be used to challenge a parent's refusal to provide any consent that is required under 7.7.1.

7.7.4 The parent of a child referred to AzEIP:

- A. determines whether he/she, his/her child, or other family members will accept or decline any early intervention service in AzEIP at any time, in accordance with Arizona law
- B. may decline a service after first accepting it, without jeopardizing other early intervention services.

## 7.8 **Prior Written Notice**

7.8.1 Prior written notice (PWN) must be given to the parent of an eligible child a reasonable amount of time before an EIP proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

7.8.2 The notice must contain sufficient detail to inform the parent about:

- A. the action that is being proposed or refused
  - B. the reasons for taking the action
  - C. all procedural safeguards available under the federal regulations, including a description of mediation, how to file a complaint and request a due process hearing, and the timelines under those procedures.
- 7.8.3 The notice must be understandable to the general public and provided in the native language of the parent, unless it is clearly not feasible to do so.
- 7.8.4 If the native language or other mode of communication of the parent is not a written language, the Service Coordinator shall take steps to ensure that:
- A. the notice is translated orally or by other means to the parent in the parent's native language or other mode of communication
  - B. the parent understands the notice
  - C. there is written evidence that the requirements of this paragraph have been met.
- 7.8.5 If the parent has a vision impairment or hearing difference, or has no written language, the mode of communication must be the identified mode of communication the parent normally uses, or as requested by the parent (such as American Sign Language, Braille, or oral communication).

## 7.9 **Identification of the Parent and Use of a Surrogate Parent**

- 7.9.1 A parent is defined as:
- A. a biological or adoptive parent of a child
  - B. a foster parent, unless Arizona law, regulations, or contractual obligations with an Arizona or local entity prohibit a foster parent from acting as a parent
  - C. a guardian generally authorized to act as the child's parent, or authorized to make early intervention, educational, health or developmental decisions for the child (but not the State if the child is a ward of the State)
  - D. a person acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child's welfare
  - E. a surrogate parent who has been appropriately appointed.
- 7.9.3 It is the responsibility of the EIP to determine who can make early intervention service decisions for a child, including deciding whether to participate in AZEIP, consent to screening, evaluation, assessment, the provision of services, and consent to share early intervention records.
- 7.9.4 AZEIP policies and procedures protect the rights of children referred to AZEIP when:
- A. no parent can be identified
  - B. after reasonable efforts, the EIP cannot locate a parent
  - C. the child is a ward of the State of Arizona.

- 7.9.5 When more than one individual is qualified to act as the parent of a child, the biological or adoptive parent who attempts to act as the parent is presumed to be the parent for purposes of making early intervention decisions on behalf of the child, unless:
- A. that person does not have legal authority to make educational decisions for the child (such as when parental rights have been terminated)
  - B. there is a judicial order or decree that specifies some other individual to act as the parent for early intervention purposes.
- 7.9.6 If the biological or adoptive parent cannot be located or does not attempt to act as the parent, the EIP shall determine the parent in the following order of availability:
- A. a relative or stepparent with whom the child lives
  - B. a foster parent
  - C. a guardian appointed for the child, other than the state (i.e., DCS, or its' employees/contractors)
  - D. a surrogate parent who meets the requirements in this section.
- 7.9.7 When DCS has legal custody of a child and the child has been removed from his/her home, a biological parent is not attempting to act as the early intervention parent (and another early intervention parent must be identified) when the EIP:
- A. has made three attempts to contact the biological parent (if a telephone number is available, calling at different times of day, including at least one contact attempt during the evening hours) and if no telephone is available, then through the mail over the course of three weeks; and
  - B. has contacted the referral source, to gather additional information, if available, about the biological parent's last known telephone number or address, but still is not able to make contact with the parent; or
  - C. the attorney for the biological parent or the biological parent states that he/she does not want to act as the early intervention parent; or
  - D. there is a No Contact Order as to the biological parent.

If A-Dis met, the EIP may identify another individual to act as the parent for the child under IDEA, Part C who meets the requirements of this section.

- 7.9.8 The EIP is responsible for:
- A. determining whether a child needs a surrogate parent contacting ADES/AzEIP to coordinate the assignment of a surrogate parent to the child within 30 days
  - B. consulting with the agency (such as DCS) that has been assigned care of the child to discuss the appointment of a surrogate parent when the child is a ward of the State or placed in foster care.
- 7.9.9 In the case of a child who is a ward of the State, the surrogate parent may be appointed by the judge overseeing the child's case provided that the requirements of a surrogate parent in this section are met.

- 7.9.10 A surrogate parent is an individual who has been appropriately trained and is identified on the list of available persons by ADES/AzEIP to act as a surrogate parent. A surrogate parent:
- A. may not be an employee of ADES or any other public agency or early intervention service provider that provides early intervention services, education, care, or other services to the child or any family member of the child
  - B. may not have a personal or professional interest that conflicts with the interest of the child he/she represents
  - C. has knowledge and skills that ensure adequate representation of the child.
- 7.9.11 A person who is otherwise qualified to be a surrogate parent is not an employee of an agency solely because she/he is paid by the agency to serve as a surrogate parent.
- 7.9.12 A surrogate parent has the same rights as a parent in AzEIP and may represent the child in all matters, including:
- A. the screening, evaluation, and assessment of the child
  - B. development and implementation of the child's IFSP, including annual evaluations and periodic reviews
  - C. the ongoing provision of early intervention services to the child
  - D. any other rights established under IDEA, Part C, such as procedural safeguards.

## 7.10 **Dispute Resolution**

- 7.10.1 ADES/AzEIP is responsible for ensuring that procedures for the resolution of disputes are in keeping with the child's best interests and family's priorities. Parents will be informed of all their options for dispute resolution and provided assistance, as appropriate, in accessing these options.
- 7.10.2 AzEIP ensures that families are informed of all their informal and formal dispute resolution options.
- 7.10.3 Informal disputes include working with the Service Coordinator, his/her supervisor, or program director to resolve the concern without the use of formal procedures, as listed below.
- 7.10.4 Formal dispute resolution options include:
- A. requesting mediation to resolve disputes involving any matter under IDEA, Part C
  - B. filing a signed written complaint regarding any violation of IDEA, Part C
  - C. requesting a due process hearing to resolve a complaint with respect to a particular child when the EIP proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of early intervention services to the child and family.
  - D. ensuring that the parent understands these options and the procedures to exercise one or more of them. The Service Coordinator may help the parent access the various dispute resolution options, if needed.
  - E. collaborating to determine jurisdiction based on the nature of the complaint if the child who is the subject of the dispute is also eligible for another Federal or State program, which has its own dispute resolution process.
- 7.10.5 Mediation
- A. Mediation is voluntary and may only be used when both parties to the dispute agree to do so.
  - B. A party may seek mediation to resolve disputes involving any matter under IDEA, Part C, including matters arising prior to the filing of a due process complaint.
  - C. Mediation cannot be used as a mandatory preliminary step prior to any other administrative or legal recourse.
  - D. Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights under IDEA, Part C.
  - E. Mediation must be conducted by a qualified and impartial mediator who is trained in effective mediation techniques and knowledgeable in the law related to early intervention.

- F. ADES ensures that it selects mediators on a random, rotational, or other impartial basis.
- G. The State bears the cost of the mediation process, including the cost of mediation.
- H. Parties resolving a dispute through mediation must sign a legally binding agreement that describes the resolution and states all discussions occurring during mediation are confidential and may not be used as evidence in any subsequent due process hearing procedure or civil proceeding in any Federal or State court; and is signed by both the parent and a representative of ADES who has the authority to bind ADES.
- I. A written, signed mediation agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.
- J. An individual who serves as a mediator:
  - 1) may not be an employee of ADES or an EIP that is involved in the provision of early intervention services or other services to the child. However, a person who otherwise qualifies as a mediator is not an employee of ADES or an EIP solely because s/he is paid by the agency to serve as a mediator; and
  - 2) must not have a personal or professional interest that conflicts with the person's objectivity.

#### 7.10.6 Formal Complaints

- A. An agency, employee, parent, or organization may file a written, signed complaint with ADES/AzEIP alleging a violation of the requirements and regulations of IDEA, Part C and the facts on which the complaint is based.
- B. Parents shall be given written information describing the procedures to resolve disputes.
- C. Parents will be informed that they may file a formal complaint and use the informal complaint resolution process, mediation, or request a due process hearing at the same time. Service coordinators are responsible for ensuring that parents understand these procedures. If appropriate, they may help parents file a formal complaint.
- D. Information on the procedures to resolve complaints will be widely disseminated to:
  - 1) the AzEIP service providing agencies and their contractors
  - 2) family training, protection, and advocacy centers
  - 3) other appropriate individuals, agencies, institutions, and organizations.

- E. ADES/AzEIP will resolve all timely filed complaints meeting the requirements in 7.9.6 within 60 days after the complaint is filed. A complaint is considered filed upon receipt by the ADES/AzEIP.
- F. An extension to the 60-day timeline will be permitted if:
  - 1) exceptional circumstances exist with respect to a particular complaint
  - 2) the parent (or individual or organization if mediation is available to them under State procedures), the ADES, the AzEIP service providing agency, the EIP and/or early intervention services provider agree to extend the time to engage in mediation under 7.9.6.F.
- G. Complaints alleging a failure by an EIP or contractor to implement a due process hearing decision must be resolved by ADES/AzEIP.

#### 7.10.7 Due Process Complaint and Hearing

- A. A parent may file a due process complaint requesting a hearing to resolve a complaint with respect to a particular child related to the proposal or refusal to initiate or change the:
  - 1) identification of the child (screening)
  - 2) evaluation of the child (evaluation)
  - 3) placement of the child (eligibility determination)
  - 4) provision of early intervention services to the child and family (IFSP services).
- B. All due process hearings must be carried out at a time and place that is reasonably convenient to the parent.
- C. The due process hearing procedures must be completed, and a written decision mailed to each of the parties within 30 days after the appropriate EIP or ADES/AzEIP receives the request for the due process hearing. A hearing office may grant an extension beyond the 30-day period at the request of either party.
- D. During the pendency of a due process complaint, unless ADES/AzEIP and the parent of a child otherwise agree, the child must continue to receive the appropriate early intervention services in the setting consented to by the parent on the IFSP. If the complaint involves an application for initial services, the child must receive those services that are not in dispute.
- E. In a due process proceeding, the parent has a right to:
  - 1) be accompanied and advised by an attorney and/or individual(s) with special knowledge or training with respect to early intervention services for eligible children
  - 2) present evidence and confront, cross-examine, and compel for the

- 3) attendance of witnesses
- 4) prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five (5) days before the hearing
- 5) obtain written or electronic, verbatim transcription of the hearing at no cost to the parent
- 6) receive a written copy of the findings of fact and decision at no cost to the parent.

#### 7.10.8 Civil Action

- A. Any party aggrieved by the findings and decision regarding a due process complaint has the right to bring a civil action in State or Federal court.

### 7.11 **Data Breach**

#### 7.11.2 Introduction

- A. Federal and Arizona law requires reasonable efforts to secure and protect certain information that the ADES/AzEIP possesses, thereby protecting the integrity and confidentiality of any such maintained information.

#### 7.11.3 Definitions

- A. For purposes of this policy, a data breach is "any instance of an unauthorized release of or access to personally identifiable information (PII) or other information not suitable for public release" that ADES/AzEIP collects, maintains, manages, operates control over, and/or otherwise oversees.
- B. A data breach may occur from, but is not limited to, unauthorized data copying, unauthorized dissemination, system hacking, unauthorized data viewing, loss of physical data (e.g., loss of laptop computer, flash drive, mobile phone, tablet, etc.), accidental release of data, and/or accidental (unsecured) access to data.

#### 7.11.4 Scope

- A. This data breach response policy applies and includes any child data, family data, financial data, health insurance data which are collected, maintained, managed, operated, or otherwise controlled by ADES/AzEIP, including AzEIP Participating Agencies, local early intervention programs, contractors, or subcontractors.
- B. This data breach response policy specifically excludes:
  - 1) aggregate/publicly reported data
  - 2) training reports
  - 3) information that could not result in identifying a particular child

- C. This data breach response policy applies to AzEIP Participating Agencies and AzEIP service providing agencies that collect, maintain, manage, operate, or are otherwise active in the control of child data, family data, fiscal data, health insurance data that if breached would trigger notification. This may include staff or subcontractors from local programs directly associated with ADES, ADHS, AHCCCS, ASDB or ADE. If such local programs are named, all such programs must adhere to this policy including actions listed below in response to a data breach for any data that ADES/AzEIP collects, maintains, manages, operates control over, and/or otherwise oversees.

#### 7.11.5 Policy

- A. It is the responsibility of anyone observing what appears to be a data breach, including a breach of security designed to protect such data, potential or actual violation of other federal or state data law/statute/regulation/rule/policy, theft of hardware and/or software designed to house and protect data, unauthorized duplication of data, or any action placing the state or state resources at risk pursuant to this data breach policy, must immediately report the incident to an appropriate-level supervisor, manager, or security officer within their organization.
- B. The Part C Coordinator or designee is responsible for informing and ensuring that staff follow the intent of this policy and adhere to all related procedures including the provision of training and technical assistance. The Part C Coordinator or designee is responsible for investigating and confirming any data breach. The Part C Coordinator or designee is charged with carrying out the actions within this data breach response policy. The Part C Coordinator or designee is responsible for monitoring adherence to this policy and will document such monitoring.
- C. In the event of a data breach, all the following immediate actions shall be considered and those deemed applicable by the Part C Coordinator or designee shall be implemented:
  - 1) As it is the responsibility of anyone, including ADES/AZEIP staff, Participating State Agencies, vendors, contractors, and subcontractors to report a data breach or potential data breach, and when such breach has been confirmed, report to the Part C Coordinator or designee. The Part C Coordinator or designee shall follow ADES policies and procedures.
  - 2) The Part C Coordinator or designee shall consider all options of informing both individuals potentially at risk based on the breached data and, if warranted, the public at large.
  - 3) When individuals potentially at risk based on the breached data and/or the public at large are to be informed, the Part C Coordinator or designee shall determine when and how such notification shall occur

- in accordance with all applicable laws.
- 4) After any notifications have occurred, the Part C Coordinator or designee shall consider and may implement any of the following post breach actions:
    - a. The Part C Coordinator or designee shall review the data breach and determine what and when procedures shall be taken to prevent or minimize risk of similar data breaches in the future.
  - B. A participating state agency or service providing agency that has a security policy in place and maintains a breach response policy and procedures consistent with the requirements in this policy shall be in compliance with the requirements of this policy.