

# BABYNET NOTICE OF CHILD AND FAMILY RIGHTS

BabyNet is South Carolina's Individuals with Disabilities Education Act (IDEA) program for infants and toddlers up to age three with developmental delays, or conditions associated with developmental delay, and their families.

This Notice of Child and Family Rights is written to inform you of rights and responsibilities under IDEA Part C that governs BabyNet program services. A complete text of IDEA Part C in federal regulations is contained in Code of Federal Regulations (34 CFR Part 303), and in State law (Act 41 of 1989).

This is official notice of the rights of eligible children and their families as required by federal Part C regulations.

## 1. Basic Rights

Under IDEA Part C you (parent or legal guardian) have the right to:

- Prompt evaluation, assessment, eligibility determination and Individualized Family Service Plan (IFSP) if eligible for BabyNet services. This must be completed within 45 days after all referral information is received.
- Early intervention services as described on your child's IFSP.
- Evaluation, assessment, IFSP development, service coordination, and procedural safeguards at no cost except for services related to autism.
- Refuse evaluations, assessments, and services.
- Participate in all meetings where decisions are made regarding your child's services; and
- Timely, written notification of when such meetings are scheduled.
- Services in natural environments (within your child's normal routines) to the maximum extent appropriate to meet your child's needs.
- Complete confidentiality of personally-identifiable information;
- Examine your child's BabyNet record and make changes if needed.
- Lodge formal complaints about services received or denied. BabyNet is responsible for addressing all complaint. You may request mediation and/or impartial due process procedures to resolve disagreements.
- Receive BabyNet information in the family's native language or mode of communication in a format that is understandable to the general public.

## 2. Consent

We will get your voluntary consent (written permission in the language or mode of communication that you normally use) before providing any BabyNet service. This is done in order to be sure that you:

- Know why the service is needed;
- Understand that your child will not be able to receive the evaluation and assessment or services unless consent is given; and
- Understand that you can revoke consent (change your mind) at any time without affecting other BabyNet services.

Parental consent is also required before information in BabyNet records is disclosed to anyone other than officials of the agency serving your child or used for any purpose other than meeting a requirement for BabyNet.

## 3. Written Prior Notice

You will be notified in writing whenever a meeting is scheduled to discuss a change in your child's services. Written prior notice must be given to you within a reasonable time (usually at least seven days) before any meeting where BabyNet proposes, or refuses to initiate, any change early intervention services for your child and your family.

The notice will describe:

- The action that is being proposed or refused;
- The reasons for taking the action;
- Reminders of the procedures described in this Notice of Child and Family Rights that you can use to lodge a complaint about the action. The state's complaint procedures, including a description of how to file a complaint and the timelines for those procedures.

## 4. BabyNet Records

The records of BabyNet services are "education records" subject to Family Education Rights and Privacy Act (FERPA) regulations.

a. Parental access to BabyNet Records

You have the right to inspect and review BabyNet records for your child. BabyNet must comply with a request without unnecessary delay and before any meeting regarding an IFSP or hearing relating to identification, evaluation, placement, or provision of services for your child and family and, in no case, more than 45 days after the request has been made. BabyNet may charge a fee for copies of records that are made for parents under Part C if the fee does not effectively prevent you from exercising your right to inspect and review those records.

If you believe that information in records collected, maintained, or used by BabyNet is inaccurate or misleading, or violates the privacy or other rights of your child or family, you may request that BabyNet amend the information.

If BabyNet refuses to amend the information as you request, you must be informed of the refusal and be advised of the right to a hearing to determine if the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child.

If the hearing results in a decision that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, BabyNet must amend the information accordingly and must inform you in writing.

If the hearing results in a decision that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child, you must be informed of your right to place in the records of your child a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the BabyNet provider. Such explanation will be maintained by the BabyNet provider as part of the records of your child as long as the record or contested portion (that part of the record with which you disagree) is maintained. If BabyNet discloses the records of your child or the contested portion, the explanation must also be disclosed.

b. Confidentiality

Information from your child's early intervention record cannot be released without your consent unless the BabyNet provider is authorized to do so under FERPA. In general, such authorization is limited to providing limited information (child's name, parent's name and date of birth) to school districts that provide pre-school services under IDEA Part B.

In addition BabyNet has policies to assure that all persons collecting or using personally identifiable information at collection, storage, disclosure, and destruction stages by assuring that all BabyNet providers:

- Receive training or instruction regarding state policies and procedures under Part C and FERPA;
- Maintain, for public inspection, a current listing of the names and positions of those employees within the agency who have access to personally-identifiable information;
- Inform parents when such information is no longer needed to provide services to the child; and
- Destroy, at the request of the parents (though permanent records of your child's name, address, and phone number may be maintained without time limitation.)

**5. Complaints About Your Child's Services**

If you are not satisfied with any aspect of BabyNet services, please first try to resolve the issue by discussing with your Service Coordinator, their supervisor or the Regional BabyNet Consultant.

At any time you have the right to submit complaints to DHEC Division of Children with Special Health Care Needs (CSHCN).

- Verbal complaints to at 803-898-0784 or 800-868-0404; or
- Written complaint by fax to 803-898-0613, by email to [babynet@dhec.sc.gov](mailto:babynet@dhec.sc.gov), or by mail to 1751 Calhoun Street, Columbia, SC 29201.

Mediation

Mediation is voluntary and freely agreed to by both parties; parents/providers are not required to use it. It provides an opportunity to resolve disagreements in a non-adversarial, informal manner. Only parents may request mediation. Mediation may not be used to deny or delay your rights to an impartial due process hearing or to deny any of your other rights under Part C. Impartial mediators are not BabyNet employees; and do not have a personal or professional interest that would conflict with the objectivity in implementing the process.

BabyNet will contact both parties to review the complaint and the mediation process, and to schedule a time and location for the mediation. Mediation sessions will be scheduled in a timely manner and held in a location that is convenient to both parties. A qualified and impartial mediator who is trained in effective mediation techniques will meet with both parties to help them find a solution to the complaint in an informal, non-adversarial atmosphere.

Any mediation agreement must be to the satisfaction of both parties. Both parties must sign the agreement and are given a copy of the written agreement at the end of the mediation. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent impartial due process hearings or civil proceedings, and the parties to the mediation may be required to sign a confidentiality pledge prior to the beginning of the process.

#### Due Process Hearings

A due process hearing is a formal procedure conducted by an impartial hearing officer. Families seeking a due process hearing must submit their request in writing by fax to 803-898-0613, by email to [babynet@dhec.sc.gov](mailto:babynet@dhec.sc.gov), or by mail to 1751 Calhoun Street, Columbia, SC 29201.

The impartial due process hearing must be completed, and a written decision made, within 30 days of the receipt of the request.

BabyNet identifies hearing officers with knowledge about the provisions of Part C, BabyNet services and needs of eligible children and their families. An impartial due process hearing is conducted by trained hearing officers who will listen to all sides, examine relevant information to the issues, seek a timely resolution of the disagreement; and provide a record of the proceedings, including a written decision.

Any proceedings for implementing the impartial due process hearing process in this section must be carried out at a time and place that is reasonably convenient to you. Parents in any impartial due process hearing have the right to:

- Be accompanied and advised by counsel and by individuals with special knowledge or training about early intervention services for children BabyNet eligible.
- Present evidence and confront, cross examine, and to compel the attendance of witnesses;
- Prohibit the introduction of any evidence at the proceedings that has not been disclosed to you at least five days before the proceeding;
- Written or electronic verbatim transcription of the proceeding; and
- Written findings of fact and decisions.

No later than 30 days after BabyNet receives your complaint, the impartial due process proceeding required under this section must be completed and a written decision must be mailed to each of the parties. Any party that does not agree with the findings and decision of the impartial due process hearing has the right to bring a civil action in state or federal court. During the time period (pendency) of any proceeding involving a disagreement (complaint), unless the BabyNet provider and you otherwise agree, your child and family will continue to receive the appropriate early intervention services currently being provided.

If the disagreement (complaint) involves an application for initial services, your child and family must receive those services that are not in dispute.

## **6. Administrative Complaints**

In addition to mediation and due process hearings, anyone may file a written, signed administrative complaint if any part of the BabyNet system is in violation of IDEA Part C. The complaint must include a statement that a requirement of the statute or regulations has been violated and a statement of the facts on which the complaint is based.

Administrative complaints must be filed with BabyNet within one (1) year of the alleged violation. Under certain circumstances, the period for filing the complaint may be longer:

- If the violation is still occurring for that child or other children; and/or
- If the person filing the complaint is requesting reimbursement or corrective action for a violation that occurred within three (3) years of filing the complaint.

Once BabyNet has received the complaint, it has 60 days (unless exceptional circumstances exist) to:

- Investigate the complaint, including conducting an independent, on-site investigation, if necessary;
- After reviewing all relevant information, make an independent determination as to whether or not a violation has occurred; and

- Issue a written decision to the complainant that addresses each allegation in the complaint and that contains the facts and conclusions as well as the reasons for the final decision.

The individual or organization filing the complaint has the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. If the final decision indicates BabyNet errors, BabyNet must provide plans for effective implementation of the decision.

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 that hearing, the state 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 action must be resolved within the 60 calendar day timeline using the complaint procedures described in this section.

Complaints that have already been decided in an impartial due process hearing involving the same parties cannot be submitted later as an administrative complaint. However, complaints may be filed related to implementation of an impartial due process hearing decision.

## **7. Surrogate Parents**

The rights of children eligible under BabyNet are protected even if:

- No parent can be identified;
- The BabyNet Service Coordinator, after reasonable efforts, cannot discover the whereabouts of a parent; or
- The child is a ward of South Carolina pursuant to the laws of the State.

Under these circumstances, an individual is assigned to act as a "surrogate" for the parent. The surrogate parent is:

- Selected in the manner authorized by BabyNet; and
- Has no interest that conflicts with the interests of the child he or she represents;
- Has knowledge and skills that ensure adequate representation of the child;
- Is not an employee of any state agency; or a person or an employee of any person providing early intervention services to the child or to any family member of the child. A person who otherwise qualifies to be a surrogate parent under this section is not an employee solely because he or she is paid to serve as a surrogate parent; and
- Resides in the same general geographic area as the child, whenever possible.

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

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