

10A NCAC 27G .0905 PROCEDURAL REQUIREMENTS

(a) General Area Program Requirements. Area programs and contract agencies shall comply with Section 303.402 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations, incorporated by reference, relating to:

- (1) the right of the parents of an eligible child to examine records;
- (2) the requirement of prior notice to parents of an eligible child in the parents' native language;
- (3) the requirement of parental consent [The period of reasonable time referenced in 303.403(a) shall be construed to be no less than two weeks.];
- (4) early intervention services [infants and toddlers referred for services shall be assessed in accordance with the provisions of 10A NCAC 26C .0303 of this Section, admitted in accordance with the provisions of Subparagraphs (a)(3) and (a)(4) of Rule .0201 of this Subchapter, and receive services in accordance with the provisions of 10A NCAC 26C .0303]; and
- (5) surrogate parents.

As used in this Section, the following terms shall have the meanings specified in Section 303.401 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations: "Consent", "Native Language", "Personally identifiable".

(b) Complaint Resolution/Mediation:

- (1) Parents of an eligible child shall have the right to a timely administrative resolution of any complaints concerning an area program's or contract agency's proposal or refusal to initiate or change the identification, evaluation or placement of the child, or concerning the provision of appropriate early intervention services to the child and the child's family. The parents of an eligible child shall also have the right to mediation of such complaints.
- (2) Whenever an area program or contract agency becomes aware that the parents of an eligible child disagree with any decision regarding early intervention services for their child, the area program or contract agency, whichever is appropriate, shall immediately advise the parents regarding the availability of, and procedure for, requesting complaint resolution under this Section.
- (3) A request by parents of an eligible child for administrative resolution or mediation of a complaint shall be in writing and sent to the Director of the area program in which the eligible child is receiving services.
- (4) A request by parents of an eligible child for administrative resolution or mediation of a complaint shall contain the following:
 - (A) name and address of the child;
 - (B) name and address of the parent;
 - (C) name and address of the area program or contract agency against whom the complaint is made;
 - (D) a statement of facts describing in sufficient detail the nature of the complaint;
 - (E) the signature of the complaining parent and the date of signing; and
 - (F) whether the parent desires mediation prior to the administrative resolution of his complaint.
- (5) Parents of an eligible child may request mediation to resolve a complaint as an intervening step prior to the administrative proceeding. If mediation is requested, the mediation shall take place prior to the administrative proceeding.
- (6) If mediation or administrative proceeding is requested, an impartial person shall be:
 - (A) subject to qualifications of an impartial person as specified in Section 303.421 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations and incorporated by reference;
 - (B) selected from a list of mediators and administrative hearing officers approved by the Chief of the Developmental Disabilities Section of DMH/DD/SAS; and
 - (C) appointed by the area director to serve as a mediator.
- (7) DMH/DD/SAS shall provide a training program for the mediators and the administrative hearing officers.
- (8) Mediation may not be used to deny or delay a parent's right to speedy complaint resolution. The mediation, administrative proceeding and written decision must be completed within the 30-day timeline set forth in Paragraph (f) of this Rule.
- (9) Parents may not be assessed fees for the mediation or any other costs related to the mediation services.
- (10) Each mediation session shall be scheduled in a timely manner and held in a location that is convenient to the parties involved.

- (11) Agreements reached by the parties involved in the mediation process shall be set forth in a mediation agreement.
 - (12) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process or civil hearings and the parties involved may be required to sign a confidentiality pledge prior to the commencement of the process.
- (c) **Scheduling Administrative Proceedings.** Upon receipt of written request for administrative complaint resolution, the Director of the area program in which the eligible child is receiving services shall schedule an administrative proceeding in accordance with the requirements of this Section. The parents shall be notified in writing of the date, time and location of the proceeding no later than seven calendar days prior to the hearing by the area director. The hearings must be scheduled at a time and place that is reasonably convenient to the parents. "Reasonably convenient" means the same as in Section 303.423 of Subpart E of Part 303 of the Code of Federal Regulations and is incorporated by reference.
- (d) **Authority And Responsibilities Of Impartial Person:**
- (1) The hearing officer shall have the powers listed in G.S. 150B-33, and in addition shall have the following authority:
 - (A) to establish reasonable time limitations on the parties' presentations;
 - (B) to disallow irrelevant, immaterial or repetitive evidence;
 - (C) to direct that additional evaluations of the child be performed;
 - (D) to make findings of fact and conclusions of law relevant to the issues involved in the hearing;
 - (E) to issue subpoenas for the attendance of witnesses or the production of documents; and
 - (F) to specify the type and scope of the early intervention services to be offered the child, where the proposed services are found to be inappropriate.
 - (2) The hearing officer does not have the authority to:
 - (A) determine that only a specific program, specific early intervention staff person or specific service provider is appropriate for the pupil; or
- B) determine noncompliance with state law and regulations.
- (3) The decision of the hearing officer shall be in writing and shall contain findings of fact, conclusions of law and the reasons for the decision. The hearing officer shall mail a copy of the decision to each party by certified mail, return receipt requested.
 - (4) The hearing officer shall inform the parent that the parent may obtain a transcript of the hearing at no cost.
- (e) **Parent Rights In Administrative Proceedings.** Parents of an eligible child shall have the rights set forth in Section 303.422 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations, incorporated by reference.
- (f) **Timelines.** The administrative proceeding shall be completed, and a written decision mailed to each of the parties within 30 days after the receipt of a parent's complaint as described in Paragraph (b) of this Rule.
- (g) **Civil Action.** Section 303.424 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the availability of a civil action for any party aggrieved by the findings and decision in an administrative proceeding is incorporated by reference.
- (h) **Status Of Child During Proceedings.** Section 303.425 of Subpart E of Part 303 of Title 34 of the Code of Federal Regulations relating to the status of a child during an administrative proceeding is incorporated by reference.
- (i) **Confidentiality.** Personally identifiable information concerning an eligible child or family member of an eligible child is confidential and may not be disclosed or acquired except as provided by in Paragraphs (j) and (k) of this Rule.
- (j) **Disclosure Of Confidential Information To Employees.** An area program or contract agency may disclose confidential information to its employees who have a legitimate need for access to the information.
- (k) **Written Consent Required.** Except as provided in Paragraph (b) of this Rule, all disclosures of confidential information, including disclosures between an area program and contract agency, may be made only with the written consent of the parents. Client information may be disclosed between agencies participating in the provision of early intervention services in accordance with G.S. 122C-53(a), 122C-55(c), 122C-55(f), or 122C-55(h), as appropriate. However, the extent of information disclosed shall be limited to that information which is necessary to carry out the purpose of the disclosure. Parents shall be informed of their right to refuse to consent to the release of confidential information. The content of written consent forms shall comply with the Confidentiality Rules, 10A NCAC 26B.
- (l) **Consent To Receive Services.** The parents of a child, eligible to receive early intervention services, may determine whether they, their child, or other family members will accept or decline any type of early intervention service without jeopardizing the right to receive other early intervention services.

History Note: Authority G.S. 143B-147; 150B-1(d); 20 U.S.C. Sections 1401 et. seq., 1471 et. seq;
Eff. May 1, 1996;
Temporary Amendment Eff. May 21, 1999;
Temporary Amendment Expired February 8, 2000;
Codifier determined that findings did not meet criteria for temporary rule on May 22, 2000;
Temporary Amendment Eff. May 30, 2000;
Recodified from 10 NCAC 14V .0805 Eff. January 1, 2001;
Amended Eff. April 1, 2001;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. July 20,
2019.