


1.B.2 Dispute Resolution

I Policy Index:

 <p>UTAH DEPARTMENT OF HEALTH Baby Watch Early Intervention Birth to Three Development</p>	Policy #:	1.B.2
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	Responsible Authority	BWEIP Manager

II Purpose:

The purpose of this policy is to describe the procedures the Baby Watch Early Intervention Program (BWEIP) has established and adopted for the timely administrative resolution of complaints through mediation, State complaints, and due process hearings. The procedures established are in accordance with section 639 of the Individuals with Disabilities Education Improvement Act (IDEIA) and the accompanying regulations which are referenced in Section V. Authority, of this document.

III Definition(s):

Consent:

Consent consists of the following:

- The parent has been fully informed of all information relevant to the activity for which consent is sought and in the parent's native language when possible;
- The parent understands and agrees in writing to the carrying out of the activity for which the parent's consent is sought;
- The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
- 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consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked).

Day:

Day means calendar day, unless otherwise indicated.

Destruction:

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

Due Process Complaint:

A complaint filed with BWEIP by an individual or organization on behalf of the child on any matter relating to the identification, evaluation, or placement of a child, or the provision of EI services to the child and his/her family.

Early Intervention (EI) Program:

Early Intervention Program refers to the local program contracted with the Baby Watch Early Intervention Program (BWEIP) to provide services for of infants and toddlers with disabilities and their families.

Early Intervention (EI) Records:

Early Intervention (EI) records are all records regarding a child that are required to be collected, maintained, or used under part C and Federal regulations. EI records are also referred to as “education records”.

Early Intervention (EI) Services:

Early Intervention (EI) services are developmental services that

- Are provided under public supervision;
- Are selected in collaboration with the parents;
- Are provided at no cost, except, where Federal or State law provides for a system of payments by families, including a schedule of sliding fees;
- Are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant’s or toddler’s development, as identified by the IFSP team;
- Meet the standards of Utah and part C, in which EI services are provided, including the requirements of part C;
- Are provided by qualified personnel;
- To the maximum extent appropriate, are provided in natural environments; and
- Are provided in conformity with an IFSP.

Individualized Family Service Plan (IFSP):

An Individualized Family Service Plan (IFSP) is a working document agreed upon by EI service providers and family members to address the special needs of eligible children from birth to three (3).

Infant or Toddler with a Disability (Child/ren):

An individual under three (3) years of age who needs EI services because s/he is experiencing a developmental delay in one or more of the following areas:

- Cognitive development;
- Physical development, including vision and hearing;
- Communication development;
- Social or emotional development;
- Adaptive development; and/or
- Diagnosed with a physical or mental condition that has a high probability of resulting in developmental delay.

Mediation:

A set of procedures established and implemented by BWEIP allowing parties to voluntarily dispute any matters under part C before a qualified and impartial mediator to resolve issues.

Native Language:

The language normally used by that individual, or, in the case of a child, the language normally used by the parents of the child.

Parent:

A biological or adoptive parent of a child, a foster parent, a guardian generally authorized to act as the child’s parent or authorized to make EI, educational, health, or developmental decisions for the child, an individual acting in the place of a biological or adoptive parent with whom the child lives or an individual who is legally responsible for the child’s welfare, or a surrogate parent as assigned by BWEIP.

Part C:

Part C of IDEIA supports states in providing EI services for infants and toddlers with disabilities from birth to age three (3) and their families.

Participating Agency:

A participating agency is any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in part C with respect to a particular child. It is also any agency or individual that provides any part C services.

Personally Identifiable Information:

As defined in the Family Education Rights and Privacy Act (FERPA), personally identifiable information includes but is not limited to: the child's name; the name of the child's parent or other family members; the address of the child or child's family; a personal identifier, such as the child's social security number, student number or early intervention ID number; other indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name; other information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person in the EI program's community, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or information requested by a person who the BWEIP or the EI program reasonably believes knows the identity of the child to whom the early intervention record relates.

State Complaint:

A signed, written complaint filed by an individual or organization on behalf of the child alleging violations of federal or state EI statutes or regulations that have occurred within one (1) year prior to the date that BWEIP received the written complaint.

Utah Department of Health, Baby Watch Early Intervention Program (BWEIP):

The Utah Department of Health, Baby Watch Early Intervention Program (BWEIP) has been designated by the governor as the lead agency with the single line of responsibility to carry out all the provisions of the part C program under IDEIA.

Ward of the State:

A ward of the State (hereafter, referred to as ward) is

- A foster child; or
- A child in the custody of a public child welfare agency.

IV Principles and Procedures:**A. Dispute Resolution Options and Procedures:**

1. BWEIP shall ensure the timely administrative resolution of complaints through:
 - a. Mediation;
 - b. State complaint procedures; and/or
 - c. Due process hearing procedures.
2. Mediation Procedures:
 - a. BWEIP shall ensure that parties are allowed to dispute any matter under part C, including matters arising prior to the filing of a due process complaint, through a mediation process. Mediation may be requested at any time.
 - 1) Mediation shall be voluntary by all parties involved;
 - 2) Mediation may not be used to deny or delay a parent's right to a due process hearing or to deny any other rights afforded under part C; and
 - 3) Mediation shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

- b. BWEIP shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
 - 1) A mediator may not be an employee of BWEIP or an EI program that is involved in the provision of early intervention or other services to the child.
 - 2) Mediators shall not have personal or professional interests that conflict with the person's objectivity; and
 - 3) A person who otherwise qualifies is not considered an employee of BWEIP and/or an EI program solely because s/he is paid to serve as a mediator.
 - c. Upon the request for mediation, BWEIP shall select a mediator from the approved list on a random, rotational, or other impartial basis.
 - d. BWEIP shall bear the cost of the mediation, to include the cost of meetings relating to the mediation process.
 - e. BWEIP shall ensure that all mediations are scheduled in a timely manner and are held in a location that is convenient to all parties in the dispute.
 - f. If a resolution of all parties is reached through the mediation, the parties must execute a legally binding written agreement that sets forth that resolution to include the following:
 - 1) A written statement that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding;
 - 2) Signatures by both the parent and a representative from BWEIP authorized to bind the agency; and
 - 3) A written statement expressing that the written, signed agreement is enforceable in any State court of competent jurisdiction or in a district court of the United States.
 - g. For parents and EI programs that choose not to use the mediation process, BWEIP may provide an opportunity to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with an appropriate alternative dispute resolution entity, or the Utah Parent Center. These parties would explain the benefits of, and encourage the use of, the mediation process to parents.
3. State Complaint Procedures:
- a. BWEIP shall timely resolve any complaint, including a complaint filed by an organization or individual from another state.
 - b. Any organization or individual may file a signed written complaint, which shall be submitted to:
 - Baby Watch Early Intervention Program Manager
 - PO Box 144720,
 - Salt Lake City, Utah 84114-4720
 - c. These State complaint procedures and requirements are widely disseminated to parents and other interested individuals, including parent training and information centers, protection and advocacy agencies
 - d. The written complaint shall include:
 - 1) A statement that BWEIP, a public agency, or EI program has violated a requirement of part C;
 - 2) The facts on which the statement is based;
 - 3) The signature and contact information for the complainant; and
 - 4) If alleging violations with respect to a specific child, the complaint shall include:
 - a) The name and address of the residence of the child;

- b) The name of the EI program serving the child;
 - c) A description of the nature of the problem involving the child, including facts relating to the problem; and
 - d) A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.
- e. All complaints must be filed regarding an alleged violation that occurred not more than one (1) year prior to the date the complaint is received;
- f. The party filing the complaint must forward a copy of the complaint to the public agency or EI program serving the child at the same time the party files the complaint with BWEIP.
- g. Within sixty (60) days after a complaint is filed, BWEIP shall:
- 1) Conduct an independent on-site investigation, if BWEIP determines that an investigation is necessary;
 - 2) Provide the complainant the opportunity to submit additional information, either orally or in writing;
 - 3) Provide the BWEIP, public agency, or EI program with an opportunity to respond to the complaint including at a minimum, and at the discretion of the BWEIP, a proposal to resolve the complaint;
 - 4) Provide an opportunity for the parent who has a filed a complaint and the agency or EI program to voluntarily engage in mediation;
 - 5) Review all relevant information and make an independent decision as to whether the BWEIP, public agency or EI program is violating a requirement of part C; and
 - 6) Issue a written decision to the complainant that:
 - a) Addresses each allegation in the complaint;
 - b) Contains findings of fact and conclusions; and
 - c) Provides the reasons for BWEIP's final decision.
- h. An extension of the sixty (60) day timeline is only permitted if:
- 1) Exceptional circumstances exist with respect to a particular complaint; or
 - 2) The parent, individual, or organization filing the complaint **and** the BWEIP, public agency or EI program agree to extend the timeline to engage in mediation.
- i. BWEIP shall follow up to ensure effective implementation of its final, written decisions. Follow up, if needed, includes:
- 1) Technical assistance activities, if necessary;
 - 2) Negotiations; and
 - 3) Corrective actions to achieve compliance.
- j. In resolving a complaint in which BWEIP finds a failure to provide appropriate services, BWEIP shall:
- 1) Address that failure to provide appropriate services, including corrective actions appropriate to address the needs of the infant or toddler with a disability who is the subject of the complaint and infant's or toddler's family (such as compensatory services or monetary reimbursement).
 - 2) Address appropriate future provision of services for all infants and toddlers and their families; and
 - 3) Ensure broader corrective actions are considered based on reviews conducted under BWEIP's general supervision system (See BWEIP policy 1.A.4 *General Supervision System for Monitoring Implementation of part C*).
- k. 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 a hearing, BWEIP shall set aside any part of the complaint that is being addressed in the due process hearing until the conclusion of the hearing.

- l. Any issue that is not a part of the due process hearing will be timely resolved as described.
 - m. If an issue is raised in a complaint that has been previously decided in a due process hearing involving the same parties, the due process hearing is binding on the issue and BWEIP will inform the complainant to that effect.
 - n. A complaint alleging BWEIP, a public agency or an EI program's failure to implement a due process hearing decision will be resolved by BWEIP.
 - o. Instructions for filing a State complaint and a model complaint form are included in the [Parents' Rights, Responsibilities and Resources in Early Intervention handbook](#).
4. Due Process Hearing Procedures:
- a. Upon receipt of a request for a due process hearing, BWEIP will appoint an impartial due process hearing officer to implement the complaint resolution process.
 - b. A hearing officer shall:
 - 1) Have knowledge about the provisions of part C and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and
 - 2) Perform the following duties:
 - a) Listen to the presentation of relevant viewpoints about the due process complaint.
 - b) Examine all information relevant to the issues.
 - c) Seek to reach a timely resolution of the due process complaint.
 - d) Provide a record of the proceedings, including a written decision.
 - c. Impartial means that the due process hearing officer:
 - 1) Is not an employee of BWEIP or an EI program involved in the provision of early intervention services or care of the child; and
 - 2) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.
 - 3) A person who otherwise qualifies is not an employee of an agency solely because the person is paid by the agency to implement the due process hearing procedures or mediation procedures.
 - d. BWEIP ensures that the parents of a child referred to part C are afforded the right to:
 - 1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for infants and toddlers with disabilities;
 - 2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;
 - 3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the parent at least five days before the hearing;
 - 4) Obtain a written or electronic verbatim transcription of the hearing at no cost to the parent; and
 - 5) Receive a written copy of the findings of fact and decisions at no cost to the parent.
 - 6) Have the due process hearing carried out at a time and place that is reasonably convenient to the parents.
 - 7) Have the due process hearing completed and a written decision mailed to each of the parties within thirty (30) days after receipt of the parent's due process complaint.

- 8) A hearing officer may grant specific extensions of time beyond thirty (30) days at the request of either party.
 - 9) Any party aggrieved by the findings and decision issued pursuant to a due process complaint has the right to bring a civil action in State or Federal court.
- e. BWEIP ensures that the EI status and services of a child during the pendency of a due process complaint:
- 1) Unless the BWEIP and parents of a child otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP that is consented to by the parents.
 - 2) If the due process complaint involves an application for initial EI services, the child must receive those services that are not in dispute.
5. Federal Reporting Requirement:
- a. BWEIP reports annually to OSEP the number of:
 - 1) Due process complaints filed under section 615 of the act;
 - 2) Hearings conducted;
 - 3) Mediations held, and;
 - 4) Settlement agreements reached through such mediation.

V Authority:


- [34 CFR § 303.430 State Dispute Resolutions](#)
- [34 CFR § 303.431 Mediation](#)
- [34 CFR § 303.432 Adoption of State Complaint Procedures](#)
- [34 CFR § 303.433 Minimum State Compliant Procedures](#)
- [34 CFR § 303.434 Filing a Complaint](#)
- [34 CFR § 303.435 Appointment of an Impartial Due Process Hearing Officer](#)
- [34 CFR § 303.436 Parental Rights in Due Process Hearings](#)
- [34 CFR § 303.437 Convenience of Hearings and Timelines](#)
- [34 CFR § 303.438 Civil Action](#)
- [34 CFR § 303.721 Annual Number of Children Served – Report Requirement](#)

VI: Related Directive(s):

BWEIP policy 1.A.4 [General Supervision System for Monitoring Implementation of part C Parents’ Rights, Responsibilities and Resources in Early Intervention handbook.](#)

VII Revision Log:

December, 2012: **New** policy.
January 2013: **Deleted** definition of “LA” and **added** definition of “Utah Department of Health, BWEIP”.
June 2013: **Revisions made** to include services of a child during the pendency of a complaint.

		<i>7-01-13</i>
Susan Ord, BWEIP Program Manager		Date