

 <p>UTAH DEPARTMENT OF HEALTH Baby Watch Early Intervention Program</p>	Policy #	1.B.4
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	Responsible Authority	BWEIP Program Manager

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PURPOSE

To describe how the Baby Watch Early Intervention Program (BWEIP) has established and adopted the procedural safeguard requirements of Part C of the Individuals with Disabilities Education Act (IDEA) and accompanying regulations

DEFINITIONS

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
- 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consent, that revocation is not retroactive (i.e., it does not apply to an action that occurred before the consent was revoked)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.

Early Intervention (EI) Program: Early Intervention program refers to the local program or provider 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. Also known 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 requirements of Part C
- Are provided by qualified personnel
- To the maximum extent appropriate, are provided in natural environments
- Are provided in conformity with an IFSP

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

Individuals with Disabilities Education Act (IDEA): The Individuals with Disabilities Education Act is the federal law set forth by the United States that governs how states and public agencies provide early intervention special education and related services to children with disabilities.

Infant or Toddler with a Disability (Child/ren): A child under three 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; or
- Is diagnosed with a physical or mental condition with a high probability of resulting in a developmental delay.

1.B.4 Procedural Safeguards

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 B: Part B of IDEA supports states in providing special education and related services to all children and youth with disabilities from ages three to 22.

Part C: Part C of IDEA supports states in providing EI services for infants and toddlers with disabilities from birth to age three 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 (PII) : 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 early intervention service provider reasonably believes knows the identity of the child to whom the early intervention record relates.

PRINCIPLES AND PROCEDURES

1. Confidentiality of Personally Identifiable Information (PII)

- a. BWEIP ensures the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained pursuant to Part C and in accordance with the Family Educational Rights and Privacy Act (FERPA).
- b. Parents of a child referred to the BWEIP are afforded the right to confidentiality of Personally Identifiable Information (PII). The confidentiality procedures:
 - i. Apply to all PII of a child and the child's family that is contained the early intervention records collected, used, or maintained by the BWEIP or an EI program.
 - ii. The confidentiality procedures apply from the point in time when the child is referred for early intervention services until the BWEIP or the EI program provider until either party maintains, or is no longer required to maintain the information.
 - iii. Parents are informed of the confidentially provisions through the Parent Rights, Responsibilities, and Resources in Early Intervention handbook.
- c. Prior parental consent shall be obtained in writing before PII is disclosed to anyone other than authorized representatives, officials, or employees of BWEIP, or local EI programs. If a parent refuses consent, a meeting shall be held to explain to parents how their failure to consent affects the ability of their child to receive services under this part. The meeting does not override a parent's right to refuse consent.
- d. A referral to Part B preschool includes the disclosure of PII (child's name, date of birth, and parent contact info) to the Utah State Board of Education and the local school district is required to facilitate transition from the EI program, unless the parent objects to the Part B referral in writing.

2. EI Records Access

- a. Parents of infants or toddlers referred to or receiving EI services are provided the opportunity to inspect and review all EI records regarding their child and family that are collected, maintained, or used under Part C, including records related to evaluations and assessments, screening, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving the child, or any part of the child's early intervention record.
 - i. BWEIP and its EI programs shall:
 1. Comply with a parent's request to inspect and review records without unnecessary delay and before any meeting regarding the child's IFSP, or prior to any due process hearing. Access will be granted within 10 days of a request.
 2. BWEIP and its EI programs shall provide parents, on request, a list of the types and locations of EI records collected, maintained, or used by the agency.
 - ii. The parent's right to inspect and review EI records includes the right to:
 1. A response from the participating EI agency for explanations and interpretations of the EI records
 2. Request copies of the records, if failure to provide those 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 records
 - iii. If any EI record includes information on more than one child, the parent has the right to inspect and review **only** the information relating to their child or to be informed of that specific information.
 - iv. BWEIP and its EI programs may presume that the parent has authority to inspect and review records relating to his or her child, unless the agency has been provided documentation that the parent does not have the authority under applicable Utah laws governing such matters as custody, foster care, guardianship, separation, and divorce.

1.B.4 Procedural Safeguards

- v. BWEIP or its EI programs shall provide at no cost to parents:
 - 1. A summary of evaluations, assessments of the child, and family assessments, with the notice of eligibility/ineligibility
 - 2. BWEIP or its EI programs shall provide at no cost to parents, A copy of the IFSP as soon as possible after each IFSP meeting
 - 3. An initial copy of the child's early intervention record
 - vi. BWEIP and its local EI programs may charge a fee for copies of records that are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records. They may not charge a fee to search for or to retrieve information.
 - vii. BWEIP or its EI programs make an initial copy of the child's early intervention record available at no cost to parents.
 - viii. Parents are informed of these rights by their EI program and through the Parent Rights, Responsibilities, and Resources in Early Intervention handbook.
- b. BWEIP and each EI program shall keep a record of parties obtaining access to EI records collected, maintained, or used under Part C (except access by parents and authorized representatives and employees of the participating agency) to include, the name of the party, date access was given, and the purpose for which the party is authorized to use the EI records.

3. Requests to Amend EI Records

- a. A parent who believes that information in the EI records collected, maintained, or used is misleading, or violates the privacy or other rights of the child or parent may request that the EI program that maintains the information amend the information.
 - i. The EI program shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.
 - ii. If the EI program refuses to amend the information in accordance with the request, it shall inform the parent of the refusal and advise the parent of the right to request a due process hearing BWEIP or the local EI program shall, on request, provide parents with the opportunity for a hearing to challenge information in their child's EI records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child or parents.
 - iii. A parent may request a due process hearing or may request a hearing directly under procedures that are consistent with FERPA.
 - 1. If, as a result of the hearing, BWEIP decides that the information is inaccurate, misleading or in violation of the privacy or other rights of the child or parent, it shall amend the information accordingly and so inform the parent in writing.
 - 2. If, as a result of the hearing, the agency decides that the information is NOT inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, it shall inform the parent of their right to place in the EI records it maintains on the child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.
 - 3. Any explanation shall be maintained as a part of the early intervention record, including when disclosed to any party.
 - iv. These policies and procedures are enforced through BWEIP's General Supervision System. A parent or other individual may file a complaint if these requirements have not been met.

4. Safeguards

- a. The EI program shall protect the confidentiality of PII at the collection, maintenance, use, storage, disclosure, and destruction states.
 - i. One official at the EI program shall assume responsibility for ensuring the confidentiality of PII.
 - ii. All persons collecting or using PII shall receive training or instruction regarding the BWEIP's policies and procedures.

- iii. Each EI program shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to PII.

5. Destruction of Information and Records

- a. The EI program shall inform parents when PII collected, maintained, or used under this part is no longer needed to provide services to the child.
- b. The information shall 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), EI program(s), and exit data (including year and age upon exit, and any programs entered into upon exiting) may be maintained without time limitation.
- c. BWEIP requires EI programs to keep the hard copy of education records for 5 years from the time the child exits the EI program. At that time, the records can be destroyed. Electronic records can be kept indefinitely.

6. Parental Consent and Prior Written Notice

- a. The EI program ensures that written parental consent is obtained before:
 - i. All evaluation and assessments of a child are conducted
 - ii. EI services are provided to the child
 - iii. Disclosure of PII
- b. If a parent does not give consent for evaluation, or services, the respective EI program shall make reasonable efforts to ensure that the parent is fully aware of the nature of the evaluation and assessment of the child for EI services that may be available if the child is found eligible, and that the parent understands that the child will not be able to receive the evaluation, assessment, or EI services unless consent is given.
- c. BWEIP and its EI programs may not use the due process hearing procedures to challenge a parent's refusal to provide consent.
- d. The parents of an infant or toddler with a disability determine whether they, their infant or toddler with a disability, or other family members will accept or decline any EI service at any time.
- e. Parents may decline a service after first accepting it, without jeopardizing other EI services.
- f. BWEIP ensures that prior written notice shall be provided to parents a reasonable time before BWEIP or a local program proposes, or refuses to initiate or change:
 - i. The identification of the infant or toddler (i.e., determines the child is eligible or ineligible);
 - ii. The evaluation of the infant or toddler
 - iii. The placement of the infant or toddler
 - iv. The provision of early intervention services to the infant or toddler with a disability and that infant's or toddler's family
- g. The notice is in sufficient detail to inform parents about:
 - i. The action that is being proposed or refused
 - ii. The reasons for taking the action
 - iii. All procedural safeguards that are available, including a description of mediation, how to file a State complaint and a due process complaint, and any timelines under those procedures.
- h. The notice is written in language understandable to the general public and provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication of the parent is not a written language, BWEIP or the local EI program will take steps to ensure that:
 - i. The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication
 - ii. The parent understands the notice
 - iii. There is written evidence (i.e., parent signature) that the parent received the prior written notice.

7. Surrogate Parents

- a. In the event no parent can be identified or located, BWEIP shall ensure that the rights of a child are protected.
i. BWEIP or another public agency shall assign an individual to act as a surrogate for the parent as permitted under state law.
ii. This assignment process includes methods for determining whether a child needs a surrogate parent; and assigning a surrogate parent to the child.
iii. A person selected as a surrogate parent shall:
1. Not be an employee of BWEIP or any other public agency or EI program providing EI services, education, care or other services to the child or family members of the child
2. Not have personal/professional interest that conflicts with the interest of the child they represent
3. Have appropriate knowledge and skills to ensure adequate representation of the child
b. In the event a child who is a ward of the state, the surrogate parent may be appointed by the judge overseeing the infant or toddler's case.
c. The surrogate parent has the same rights as a parent for all purposes under Part C.

AUTHORITY

- 34 CFR § 303.400: General responsibility of lead agency for procedural safeguards
34 CFR § 303.401: Confidentiality and opportunity to examine records
34 CFR § 303.402: Confidentiality
34 CFR § 303.404: Notice to parents
34 CFR § 303.405: Access Rights
34 CFR § 303.406: Record of access
34 CFR § 303.407: Records of more than one child
34 CFR § 303.408: List of types and locations of information
34 CFR § 303.409: Fees for records
34 CFR § 303.410: Amendment of records at a parent's request
34 CFR § 303.411: Opportunity for a hearing
34 CFR § 303.412: Result of a hearing
34 CFR § 303.413: Hearing procedures
34 CFR § 303.414: Consent prior to disclosure or use
34 CFR § 303.415: Safeguards
34 CFR § 303.416: Destruction of information
34 CFR § 303.417: Enforcement
34 CFR § 303.420: Parent consent and ability to decline services
34 CFR § 303.421: Prior written notice and procedural safeguards notice
34 CFR § 303.422: Surrogate parents

RELATED DIRECTIVES

Parents Rights, Responsibilities and Resources in Early Intervention handbook

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

Table with 2 columns: Signature (Susan Ord) and Date (7-01-13). Row 2: Susan Ord, BWEIP Program Manager and Date.