

# State of Montana

Department of Health and Human Services  
Developmental Disabilities Program



## Part C Early Intervention Services Dispute Resolution Handbook 2010



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## INTRODUCTION

There may come a time during provision of early intervention services when a dispute or complaint arises. Parties who can report complaints include parent(s), surrogate parent(s), legal guardian(s), individual(s), organization(s), and public or private Part C service provider(s) acting on behalf of the State.

When two or more of these parties reach an impasse concerning an early intervention service issue, there are two dispute resolution procedures available primarily depending on the type of issue that formed the basis for the complaint. The first set of procedures is the Individual Child Complaint Procedures for resolving disputes involving decisions regarding identification, evaluations, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. The other procedure is the State (Formal) Complaint Procedure for resolving disputes involving systemic issues that violate the requirements or regulations of Part C under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA).

### **Individual Child Complaint Procedures:**

An **informal complaint** can take many forms. A parent could express a concern or submit a written complaint to a Family Support Specialist, to an administrator of the Part C agency or to the State Part C Coordinator. Informal procedures allow the parties to explore options and solutions in an informal way that is most comfortable for the parent(s), surrogate parent(s), or legal guardian(s) and the Part C agency. If agreement is not readily achieved, parents should be informed of all complaint procedural options and that they may use any option to resolve the dispute.

**Mediation** may be requested by parent(s), surrogate parent(s), legal guardian(s), or a Part C agency. Mediation may be requested if a parent and the Part C agency are unable to resolve a dispute or complaint about decisions regarding identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. A parent or other involved party may request mediation before filing a request for a due process hearing. They may also request mediation after filing such a request. However, mediation can not delay or deny a due process hearing request; instead, it is an opportunity for each party to come up with resolutions in a less formal manner. Both parties have to agree to participate in mediation. An impartial third party "mediator" will facilitate the process. The request must be made in writing to the Director of the Developmental Disability Program.

A **Due Process Hearing** may be requested by parent(s), surrogate parent(s), or legal guardian(s) if they and a Part C agency are unable to resolve a dispute or complaint regarding identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. The request must be made in writing to the Director of the Developmental Disability Program. It is a formal process for settling disputes before an impartial hearing officer.

### **State (Formal) Complaint Procedure:**

This procedure is available for resolving any complaint that raises systemic issues concerning a violation of a requirement or regulations of Part C of the IDEA. In addition, a parent(s), surrogate parent(s), or legal guardian(s) may use this complaint procedure for an individual child complaint(s). If the complaint solely concerns an individual child's identification, evaluation, or placement of the child, or the provision of appropriate early intervention service(s) to the child and the child's family, they should be advised of the Individual Child Complaint resolution procedure as an option.

### **Rights and Procedural Safeguards:**

The **rights and procedural safeguards** guaranteed under IDEA provide a framework for a family's experience in early intervention. For families, rights and safeguards help ensure that a respectful, confidential, team process results in an Individualized Family Services Plan (IFSP) that addresses their child's needs and interests. For the early intervention system, rights and safeguards assure quality and equity. Procedural safeguards provide the protection of: 1) timely resolution of complaints and including the option of mediation, 2) confidentiality of personally identifiable information; 3) right of parents to accept or decline early intervention service; 4) appointment of a surrogate parent when needed for the infant or toddler, 5) written prior notice to parents concerning the Part C agency's changes of initiation, or refusal to initiate or change, the identification, evaluation, or placement of the infant or toddler or the provision of appropriate early intervention services to the infant or toddler, and 6) information provided to parents in their native language. The procedural safeguards, including the dispute/complaint resolution procedures, are reviewed with families at least twice annually when IFSPs are routinely evaluated and rewritten.

Again, families are to be informed that there are several dispute resolution procedures they can exercise if and when they have a dispute or complaint.

After you review the information in this handbook, if you have further questions or need more detail about any of these dispute resolution processes, please contact the Developmental Disabilities Program (DDP) at 406-444-2995 or 406-444-5647. DDP is responsible for the administration and monitoring of early intervention services provided throughout Montana to eligible infants and toddlers and their families under Part C of the Individuals with Disabilities Education Improvement Act of 2004 (IDEA). Staff at DDP can assist you with questions or requests regarding conflict resolution. Copies of the laws and regulations governing complaint resolution processes are also available upon request from DDP.

## **Clarification of Terms**

Parent- 1) A natural or adoptive parent of a child; 2) guardian; 3) A person acting in the place of a parent (such as a grandparent or step-parent with whom the child lives, or a person who is legally responsible for the child's welfare) or; 4) A surrogate parent who has been assigned in accordance with 303.406.; 5) foster parent, unless State law prohibits a foster parent from acting as a parent.

Disputes- 1) an argument. 2) a disagreement between people.

Complaint- 1) an act of complaining. 2) a reason for dissatisfaction. 3) the expression of dissatisfaction.

### Other words that could be used instead of dispute and/or complaint:

- Concern- 1) worry; anxiety. 2) a matter of interest or importance.
- Conflict- a serious disagreement or argument.
- Disagreement- have a different opinion.
- Difference- a disagreement, quarrel, or dispute.
- Grievance- a real or imagined cause for complaint.
- Problem- an unwelcome matter needing to be dealt with.

Part C Agency- A non-profit organization that coordinates early intervention services (Part C) to families.

### Procedural safeguards (Part C Statues, section 639) –

- 1) The timely administrative resolution of complaints by parents. Any party aggrieved by the findings and decision regarding an administrative complaint shall have the right to bring a civil action with respect to the complaint in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. In any action brought under this paragraph, the court shall receive the records of the administrative proceedings, shall hear additional evidence at the request of a party, and, basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.
- 2) The right to confidentiality of personally identifiable information, including the right of parents to written notice of and written consent to the exchange of such information among agencies consistent with Federal and State law.
- 3) The right of the parents to determine whether they, their infant or toddler, or other family members will accept or decline any early intervention service under this

part in accordance with State law without jeopardizing other early intervention services under this part.

- 4) The opportunity for parents to examine records relating to assessment, screening, eligibility determinations, and the development and implementation of the individualized family service plan.
- 5) Procedures to protect the rights of the infant or toddler whenever the parents of the infant or toddler are not known or cannot be found or the infant or toddler is a ward of the State, including the assignment of an individual (who shall not be an employee of the State lead agency, or other State agency, and who shall not be any person, or any employee of a person, providing early intervention services to the infant or toddler or any family member of the infant or toddler) to act as a surrogate for the parents.
- 6) Written prior notice to the parents of the infant or toddler with a disability whenever the State agency or service provider proposes to initiate or change or refuses to initiate or change, the identification, evaluation, or placement of the infant or toddler with a disability, or the provision of appropriate early intervention services to the infant or toddler.
- 7) Procedures designed to ensure that the notice required by paragraph (6) fully informs the parents, in the parents' native language, unless it clearly is not feasible to do so, of all procedures available pursuant to this section.
- 8) The right of parents to use mediation in accordance with section 615, except that
  - (A) any reference to a State's lead agency established or designated under section 635 (a)(10);
  - (B) any reference in the section to a local educational agency shall be considered to be a reference to a local service provider or the State's lead agency under this part, as the case may be

## **DISPUTE RESOLUTION PROCEDURES FOR INDIVIDUAL CHILD COMPLAINTS**

### **I. Informal Complaint**

- A. Parents, surrogate parents, or legal guardians may choose the Informal Complaint Process as a first step in resolving a dispute/complaint concerning early intervention services or that Part C requirements and regulations are not being met. They can talk with a Family Support Specialist, an administrator of the Part C agency or with the state Part C Coordinator to try to resolve the dispute/complaint at the lowest administrative level possible. Parent(s), surrogate parent(s), or legal guardian(s) are encouraged to use this procedure, but are not required to make this the first step in resolving the dispute/ complaint.
- B. The benefit(s) of addressing the dispute/complaint at this level is to allow both parties to explore options and solutions in a way that is most comfortable for the parent(s), surrogate parent(s), or legal guardian(s) and the Part C agency.

### **II. Mediation**

#### **A. Introduction to Mediation**

- 1. Mediation in early intervention is a process designed to assist parents and Part C agencies to resolve disputes or complaints about identification, evaluations, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. A trained mediator works with both parties to guide them toward a mutually satisfactory solution in the best interest of the child. This occurs at a non-adversarial meeting, which is more structured than an IFSP meeting, but less formal than a due process hearing. It will not interfere with any procedural safeguards. Mediation can be requested before or after requesting a due process hearing. Mediation can not delay the 30 day timeline for timely resolution of a complaint. The mediation session is confidential and encourages open communication. The responsibility for the administration of the early intervention mediation process is with the Developmental Disabilities Program of the Department of Public Health and Human Service.
- 2. The purpose of mediation is providing an alternative to due process that is less adversarial means to resolve disputes or complaints between parents and Part C agencies. In virtually all cases, mediation is less costly and less antagonistic than due process. Mediation is a voluntary process and both parties must agree to participate. The purpose of mediation is to help both parties focus on solutions for their differences and to focus on what is best for the child.
- 3. The benefits of mediation are many. Mediation can:
  - a. Identify disagreements concerning the identification of, evaluation of, placement of, or services provided to an eligible child and the child's family;
  - b. Clarify the issues causing the disagreement;
  - c. Provide those involved with uninterrupted opportunities to present their points of view;



- d. Stimulate mutual problem-solving efforts;
  - e. Promote positive working relationships between parents and agency personnel; and
  - f. Help parents and agency personnel focus on what they have in common-concern for the child-rather than on the issues dividing them.
4. The cost of early intervention mediation
    - a. Early intervention mediation is provided at no cost to the parents or the Part C Agency. The Developmental Disabilities Program pays the cost of mediation, not to exceed \$800. Parties who choose to involve their attorneys in mediation are responsible for their own attorney fees. Any incidental costs (i.e., for meeting rooms or refreshments) are the Part C Agency's responsibility.
- B. Participants and Roles**
1. Parents and Part C Agency -The parties are expected to approach the mediation in good faith and with the intention of reaching an agreement. They will be active participants in the session and, if mediation is successful, will develop an agreement with the assistance of the mediator.
  2. The mediator is a **neutral** third party acting as a **facilitator** to assist parents and Part C agency personnel in reaching an agreement. Although the mediator is **in control** of the session, he/she does not make the decision on how to resolve the issue(s). The mediator allows the parties to present their positions and attempts to achieve mutual understanding and a solution to the problem in the best interest of the child. The mediator **facilitates** the process. He or she summarizes positions and helps the parties consider possible alternatives.
  3. The parties understand that mediation is not a substitute for independent legal advice. The parties may secure independent legal advice throughout the mediation process. If the parties do so, they are responsible for their own legal fees.
  4. The number of participants at each mediation session should be kept to a minimum. Keeping the number of participants at a minimum enhances the potential for effective problem solving. The mediator makes the final decision on who will participate.
  5. At the session, the parties to the dispute - the parent(s) and the Part C agency's representative(s) - must have the authority to make decisions and to commit any resources agreed upon as the result of the mediation.
- C. The Steps of Mediation**
1. A request for mediation may occur when parents and a Part C agency reach an impasse after having made good faith efforts to resolve their dispute(s)/ complaint(s). A request for mediation will most likely occur when parties are unable or unwilling to modify their positions without outside assistance. The parents or the Part C agency or both may request mediation. Mediation may occur on any issue considered appropriate for due process. Mediation may occur prior to or concurrent with a request for due process. However, it may not, **in any way**, interfere with the right to due process. Mediation is **not a necessary step** prior to due process. It is an **optional alternative**.

2. A parent or Part C agency may file a Request for Mediation Form (pg23) with the Director of the Developmental Disabilities Program (DDP), Department of Public Health and Human Services (DPHHS). The Director of DDP will notify the other party in writing of the request for mediation. If the other party does not wish to participate, the Director of DDP will notify the requesting party of the response. Unless both parties agree to mediation as a way to resolve their dispute/complaint, a mediation session cannot be scheduled.
  3. Appointment of a mediator
    - a. The Director of Developmental Disabilities Program will submit to the parties involved a list of three potential mediators with a brief biography for each. The parties will have five days to reach an agreement on one of the mediators. If the parties cannot come to an agreement, the DDP Director will appoint a mediator in the matter.
  4. Once appointed, the mediator will contact the parties to set the date, time and location for the mediation session and determine who will participate in the session. At that time, the mediator will answer any questions about the process and may request additional information from the parties. The mediation date should be as soon as possible, but no later than 30 calendar days from the date of the request for mediation.
  5. Mediators
  6. Individuals selected to serve as mediators have successfully completed a training program specifically designed for mediators. The Developmental Disabilities Program maintains a list of qualified mediators.
  7. Mediators are selected on the basis of these qualifications:
    - a. neutrality, both real and perceived;
    - b. knowledge of early intervention;
    - c. knowledge of the process of mediation; and
    - d. appropriate personal communication skills.
- D. Preparing for a mediation session
1. *Some good strategies for preparing for mediation include:*
    - a. Putting aside personality conflicts and focusing on the child's best interest;
    - b. Making no other plans for the day or evening;
    - c. Reviewing all relevant documents, papers, and reports prior to the session;
    - d. Organizing your information and any materials before the mediation session;
    - e. Thinking about what you want to get out of the session; Thinking about your real underlying concerns – what you hope to achieve and why it is important. Think about the concerns behind the other party's position – what do they want and why.
    - f. Thinking of possible alternatives/ways of solving the problem;
    - g. Thinking about what you want the other party to do;
    - h. Thinking about what you are willing to do; and
    - i. Being willing to listen and compromise.

- E. The location of the mediation session
1. The mediator, in consultation with the parties, will determine the location of the mediation session. The location must be convenient to both parties.
- F. The length of a mediation session
1. Mediation sessions may take up to a full day. Generally, however, sessions can be completed in a short amount of time, depending upon the complexity of the issue(s). It is recommended that participants plan to set aside a full day, even though the session is likely to conclude in a shorter period of time.
- G. Mediation session components
- The mediation session consists of several phases:
1. Introduction. The mediator begins the session promptly and explains the mediation process and the ground rules of the session to all participants.
  2. Joint Session. Both parties to the dispute are given an opportunity without *interruption* to present the issue(s) from their point of view. Only the mediator may ask questions or summarize what has been said.
  3. Caucus. The mediator may use a caucus, which is an opportunity for each party to meet privately with the mediator, to further clarify issues and positions. The mediator will not share information from the caucus without the party's consent.
  4. Agreement. When the parties reach an agreement, the mediator assists in developing a written solution. The parties determine the terms of the agreement and the mediator puts the agreement in writing. Both parties and the mediator sign the mediation agreement. At the conclusion of the session, each party receives a copy. If a mediation session results in an agreement, which would require changes to a child and family's Individualized Family Service Plan (IFSP), an IFSP team should be convened as soon as possible to consider the incorporation of elements of the agreement into the child and family's IFSP.
  5. Non-Agreement. Not all mediation sessions result in agreements. If agreement is not reached, the mediator will certify to the parties, in writing, that the mediation has been unsuccessful.
  6. Confidentiality. The discussion during the mediation session is *confidential* and there will be *no disclosure of any information given by either party*. At the conclusion of the session, and in the presence of the parties, the mediator may destroy any notes he/she has taken during the session. The only part of the mediation session that may be shared with other persons is the written agreement, or the written certification of an unsuccessful mediation.
- H. Mediator excluded from subsequent related proceedings
- The mediator will be excluded from participation in subsequent related proceedings, formal complaint investigations, and due process proceedings. Nothing occurring at a mediation session is admissible as evidence in a due process proceeding. The written agreement may be admissible in subsequent proceedings.

I. No electronic recording

No electronic recording of mediation sessions will be allowed and no records of the proceedings will be kept other than written agreements in successful mediations, or the written certifications in the case of unsuccessful mediations.

J. General Standards of Mediation Process

Mediation is a conflict resolution process in which an impartial third party facilitates participants negotiating a voluntary agreement. In mediation, whether private or public, decision-making authority rests at all times with the parties. These standards are intended to assist and guide early intervention mediation in Montana.

1. Mediators have duties to the parties, to their profession, and to themselves. They should be honest and unbiased, act in good faith, be diligent, and never seek to advance their own interests at the expense of the parties.
2. Mediators must act fairly in dealing with mediation participants, have no personal interest in the terms of any settlement agreement, have no bias toward individuals or institutions involved in mediation, be reasonably available as requested by mediating parties, and be certain that the parties are informed about the mediation process in which they are involved.
3. Impartiality: The mediator must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all mediation participants as opposed to a single party. The mediator should disclose to the participants any affiliations, which the mediator may have with any participant and obtain all parties' consent to proceed as mediator.
4. Informed consent: Each party's consent to proceed with mediation should be obtained early, prior to the beginning of substantive negotiations.
5. Confidentiality: Maintaining confidentiality is critical to the integrity of the mediation process. Confidentiality encourages candor, a full exploration of the issues, and the possibilities of settlement. The mediator should resist testifying, and disclosing other information about the substance of mediation at any proceeding without the consent of all mediating parties.
6. Suspension or termination of mediation: The mediator shall inform the participants of their rights to withdraw from mediation at any time and for any reason, except as required by law. If the parties reach a final impasse, the mediator should not prolong unproductive discussions resulting in emotional and monetary costs to the participants.
7. Comparison to other processes: The mediator shall explain that mediation is not arbitration, legal representation, or therapy and that the mediator will not decide any issues for the parties.
8. Independent advice and information: The parties understand that mediation is an agreement-reaching process in which the mediator assists parties to reach agreement in a collaborative and informed manner. It is understood that the mediator has no power to decide disputed issues for the parties. The parties understand that mediation is not a substitute for independent legal advice. The parties are encouraged to secure such advice throughout the mediation process and are advised to obtain independent legal review of any formal mediated

agreement before signing that agreement. The parties understand that the mediator has an obligation to work on behalf of all parties and that the mediator cannot render individual legal advice to any party and will not render therapy or arbitrate within the context of mediation.

9. Opportunity for full expression of interest: The mediator shall seek to provide each mediation participant with a full opportunity to effectively express his or her interests.
  10. Continued training: A mediator shall participate in ongoing training provided by the Developmental Disabilities Program and the Office of Public Instruction. The training is designed to enhance personal communication skills, neutrality, knowledge of early intervention policies and procedures, and effective mediation techniques. A mediator is encouraged to join with other mediators and members of related professions to promote mutual professional development.
- L. Mediation Conclusion
- The purpose of mediation in early intervention is to provide an alternative to due process as a way to resolve disputes/ complaints, clarify issues and stimulate mutual problem-solving efforts between parents and agencies. Even if an agreement is not reached, there is potential for both parties to leave the session with an enhanced perspective of the issues and with the focus on the child. Most mediation sessions result in better communication between the agency and the child's parents, which ultimately leads to an improved situation for the child.

### **III. Due Process**

#### **A. Scope of Procedures**

These procedures govern the process for conducting all impartial procedures for resolving individual child complaints concerning identification, evaluation, or placement of the child and arising from the provision of appropriate early intervention services to the child and the child's family, under Part C of the Individuals with Disabilities Education Improvement Act 2004 (IDEA) as Amended, (Part C services) for infants and toddlers with disabilities in this state. Procedures are based on the components that are appropriate for Part C that are mandated based on Montana's Office of Public Instruction's rules concerning special education due process, which is initiated in writing by a parent.

#### **B. Initiating Part C Service Impartial Procedures Process**

1. Impartial due process matters involving the provision of Part C services may be initiated by a parent, legal guardian or surrogate parent of an infant or toddler with a disability if the parent disagrees with a decision of a Part C agency regarding issues requiring parent consent and prior notice (including the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and child's family).
2. Parent(s), surrogate parent(s), legal guardian, and Part C agencies are encouraged to request mediation as a method to resolutions to a dispute/ complaint, in a less formal manner than a due process hearing.
3. A request for an impartial due process hearing can be made by filling out the request form (pg 24). The form then needs to be sent to the Director of the Developmental Disabilities Program.

C. Part C Service Impartial Hearing Procedures

1. Upon receipt by the Director of DDP of a written request for a due process hearing involving a Part C services dispute/complaint, the DDP Director shall:
  - a. Promptly advise the agency's board of directors and parent, legal guardian or surrogate parent of the request for due process hearing.
  - b. Provide the board of directors up to and including ten calendar days in which to address the Part C services dispute/complaint in the Part C agency, and reach a final decision. (These ten calendar days are counted as part of the 30 calendar-day period allowed for the issuance of the final order in a due process hearing.) Pending the final decision of the board of directors or upon mutual agreement of the parties, the Director of DDP shall provide mediation so long as both parties voluntarily and freely agree to the mediation. The mediation conference is an attempt to resolve the differences and, if possible, avoid a due process hearing. The mediation shall:
    - i be an intervening, informal process conducted in a non-adversarial atmosphere; and
    - ii not be used to deny or delay an aggrieved party their rights to a hearing.
  - c. Appoint an impartial hearing officer to conduct a due process hearing.
    - i The Director of DDP shall maintain a list of persons who serve as impartial hearing officers (these impartial hearing officers are also impartial hearing officers for the State Superintendent of Public Instruction for matters of special education controversy). Impartial hearing officer shall have knowledge about the provisions of Part C and the needs of, and services available for, eligible children and their families.
    - ii Selection of impartial hearing officer:
      - Upon receiving a copy of the request for hearing, the Director of DPP shall mail to each party a list of five proposed impartial hearing officers together with a summary of their qualifications.
      - A party shall have five business days to study the list, cross off any two names objected to, number the remaining names in order of preference, and return the list to the Director of DPP (a fax or phone call verifying the selection may be requested along with the mailing of the list to ensure that the timelines of the Due Process are met). Requests for more information about proposed impartial hearing officers must be directed to the Director of DPP. Unless good cause is shown, this request for more information does not extend the seven-day response time. (These five business days are counted as part of the 30 calendar-day period allowed for the issuance of the final order in a due process hearing.)
      - If, despite efforts to arrive at a mutually agreeable choice, the parties cannot agree upon an impartial hearing officer, the Director of DPP shall make the appointment.

- Notwithstanding the foregoing provisions, the parties may mutually select the impartial hearing officer from the list provided by the Director of DPP.
- iii Once appointed, the hearing officer shall perform the following duties:
- Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek and reach a timely resolution of the complaint.
  - Provide a record of the proceedings, including a written decision.
- iv Disqualification:
- A hearing may not be conducted by a person who is an employee of a Part C agency or other entity which is involved in the provision of Part C services or care of the child, or who has a personal or professional interest which would conflict with his or her objectivity in the conduct or review of the hearing.
  - A person who otherwise is qualified to conduct a hearing under paragraph (A) of this subsection is not an employee solely because he or she is paid by contract by the public agency to serve as impartial hearing officer.
2. An impartial hearing officer may at any point withdraw from consideration or from service in any hearing in which the impartial hearing officer believes a personal or professional bias or interest on any of the issues to be decided in the hearing exists which might conflict with the impartial hearing officer's objectivity. Such written request to withdraw shall be directed to the Director of DPP. Any subsequent appointment of an impartial hearing officer shall be conducted as provided above.
- D. Notice of Hearing
1. The impartial hearing officer shall, within five business days of receipt of notice of appointment by the Director of DPP, schedule a prehearing conference pursuant to Section VI. (These five business days are counted as part of the 30 calendar-day period allowed for the issuance of the final order in a due process hearing.) The impartial hearing officer shall inform the parties of all future proceedings in this matter. The notice of hearing shall include:
- a. A statement of the time, place and nature of the hearing; (Any proceeding for implementing the complaint resolution process for Part C services must be carried out at a time and place that is reasonably convenient to the parent, legal guardian or surrogate parent of the infant or toddler with a disability.)
  - b. References to the specific statutes and procedures involved available at that time;
  - c. A provision advising the parties of their right to be represented by counsel at the hearing;
  - d. A provision informing the parent of any free or low-cost legal and other relevant services available in the area; and
  - e. A statement of issues and matters to be discussed at the hearing.
2. The notice of hearing shall be sent by certified mail to all parties.

3. If the impartial hearing officer does not have details of the issues and matters to be discussed at the time of issuing the notice of hearing, a party or impartial hearing officer may later demand a more detailed account of the issues and matters to be discussed. The dates scheduled by the impartial hearing officer in the notice of hearing may be continued by the impartial hearing officer to such a convenient date as stipulated by the parent, legal guardian or surrogate parent of the infant and toddler with a disability, with the concurrence of the other parties.
  4. The notice of hearing as well as all communications conducted in the hearing shall be written in language understandable to the general public and in the native language of the parent, unless it is clearly not feasible to do so. If the native language or other mode of communication is not written language, the impartial hearing officer shall direct the notice to be translated orally or by other means to the parent in his/her native language or other means of communication.
- E. Conference and Informal Disposition
1. The impartial hearing officer may informally confer with the parties to the request for impartial due process hearing for the purpose of attempting informal disposition of any Part C services dispute/complaint.
  2. This conference of informal disposition may occur at any time prior to the issuing of the final findings of fact, conclusions of law and order of the impartial hearing officer. The parties may informally confer to resolve the Part C services dispute/complaint by stipulation, agreed settlement, consent order, or default. To be effective, any agreement made at such a conference must be reduced to writing and signed by all parties. An agreed resolution shall end the proceedings and bar further proceedings.
  3. If it is appropriate, the impartial hearing officer may draft findings of fact, conclusions of law and order and shall promptly send the document(s) to each party in the Part C services dispute/complaint.
- F. Impartial Hearing Officer's Prehearing – Formulating Issues
1. The impartial hearing officer shall schedule (at this point there may only be 16 calendar- days to complete pre-hearing, hearing, and reporting) a pre-hearing conference to consider:
    - a. The simplification of the issues; The necessity or desirability of amendments to the request for impartial due process hearing;
    - b. The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
    - c. A limitation of the number of expert witnesses;
    - d. Such other matters which may aid in the disposition of the action.
  2. The impartial hearing officer shall make an order which recites the action taken at the conference, any amendment to the request for impartial due process hearing, the agreements made by the parties as to any of the matters considered, and which limits the issues for the hearing to those not disposed of by admissions or agreements of the parties. Such order when entered will control the subsequent course of action, unless modified at the hearing to prevent manifest injustice. The impartial hearing officer, in his/her discretion,



may establish by rule a prehearing calendar on which actions may be placed for consideration as provided above.

3. The impartial hearing officer shall provide for provisions to insure the privacy of matters before him/her as is required by law. Parents maintain the right to waive their right of confidentiality and privacy in the hearing and may request that the hearing be open to the public. The impartial hearing officer shall also provide or allow an opportunity for the child to be present at the hearing upon request of the parent, guardian, surrogate parent or the individual who is the subject of the hearing.
4. The impartial hearing officer shall conduct the hearing at a time and place reasonably convenient to the parties. If the parties cannot agree on such time and place, the hearing will be held in the county in which the named Part C agency is located.

G. Discovery

1. The impartial hearing officer may compel, limit or conduct discovery prior to the hearing and/or prehearing conference pursuant to Sections VIII through X.

H. Discovery Methods

1. Parties may obtain discovery by one or more of the following methods:
  - a. Depositions upon oral examination or written questions;
  - b. Written questions;
  - c. Production of documents (or things or permission) to enter upon land or property; and
  - d. Request for admissions.
2. Any evidence to be introduced at the hearing or on file shall be made available for disclosure to all parties at least five days before the hearing or the evidence will not be admitted.

I. Scope of Discovery

1. Unless otherwise limited by order of the impartial hearing officer, the scope of discovery is as follows:
  - a. In general, parties may obtain discovery regarding any matter not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible items, and the identity and location of persons having knowledge of any discoverable material;
  - b. A party may discover facts known or opinions held by an expert who has been retained or especially employed by another party in anticipation of litigation or preparation for hearing.

J. Limitations on Discovery by the Impartial Hearing Officer

1. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the impartial hearing officer before whom the action is pending may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:
  - a. That the discovery not be had;

- b. That the discovery may be had only on specified terms and conditions, including a designation of the time or place;
- c. That the discovery may be had only by a method of discovery other than that selected by the parties seeking discovery;
- d. That certain matters should not be inquired into, or that the scope of the discovery be limited to certain matters; and/or
- e. That discovery be conducted with no one present except persons designated by the impartial hearing officer.

K. Sequence and Timing of Discovery

- 1. The impartial hearing officer shall provide reasonable discovery on the relevant issues for the hearing and shall establish a calendar so that discovery does not delay the hearing. A request for discovery must be made as soon as possible following the filing of a request for an impartial due process hearing but no later than ten calendar days prior to the hearing date. (There may be only sixteen calendar days to complete the prehearing, hearing, and reporting).

L. Ability of Cross-Examination or Participation in the Hearing

- 1. The right to examine, cross-examine or to participate as a party in this action shall be limited to the attorneys, the lay advocates with special knowledge or training with respect to the problems of infant and toddlers with disabilities who accompany and advise a particular party named in the matter, the particular parties named in the matter, and the impartial hearing officer.

M. Ex-Parte Consultations

- 1. The impartial hearing officer, after the issuance of the notice of hearing, shall not communicate with any party in connection with any issue of fact or law in such case except upon notice and opportunity for all parties to participate.

N. Powers of the Impartial Hearing Officer

- 1. The impartial hearing officer may:
  - a. Administer oaths;
  - b. Issue subpoenas;
  - c. Provide for the taking of testimony by depositions;
  - d. Set the time and place of the hearing and direct parties to appear and confer to consider simplifications of the issues by consent of the parties involved;
  - e. Fix the time for filing of briefs or other documents; and
  - f. Request the submission of proposed findings of facts and conclusions of law at the conclusion of the hearing.
- 2. The impartial hearing officer shall be bound by common law and the Montana Rules of Evidence. All evidence and objections to evidence shall be noted in the record:
  - a. Any part of the evidence may be received in written form;
  - b. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the impartial hearing officer's specialized knowledge.

O. Hearing

1. The hearing will be conducted before the impartial hearing officer in the following order:
  - a. Statement and evidence of the petitioner or other party in support of its action;
  - b. Statement and evidence of the respondent in support of its action;
  - c. Rebuttal testimony;
  - d. Closing arguments beginning with petitioner and ending with respondent.
2. The order of procedure may be changed by order of the impartial hearing officer upon a showing of good cause.
3. Each party shall have the right to conduct cross-examinations for a full and true disclosure of the facts, including the right to cross-examine the authority of any document prepared by or on behalf of or for the use of all parties and offered into evidence. All testimony shall be given under oath or affirmation.

P. Record

1. The record in the impartial due process hearing shall include:
  - a. All pleadings, motions, intermediate ruling;
  - b. All evidence received plus a stenographic record of oral proceeding;
  - c. A statement of matters officially noticed;
  - d. Questions and offers of proof, objections and proceedings thereon;
  - e. Proposed findings and exceptions; and
  - f. Findings of fact, conclusions of law and order by the impartial hearing officer.
2. A transcript of the impartial due process hearing shall be taken by a certified court reporter and transcribed and made available upon request of either party to the hearing. The Director of DPP will pay costs associated with the transcription of the record taken by the court reporter.

Q. Final Order on Part C Services Impartial Procedures Process

1. The impartial due process hearing officer shall render, in writing, findings of fact and conclusions of law separately stated and an order concerning all matters at issue in the hearing within 30 calendar days of the Director of DPP's receipt of the request for hearing. The hearing officer shall mail, or personally deliver, a written copy of the findings of fact, conclusions of law and order to each of the parties and to the Director of DPP. The hearing officer shall also mail or deliver the record as defined in Section XVI to the Director of DPP.
2. In the event the decision is not rendered within 30 calendar days from the date the request for impartial due process hearing was filed with the Director of DPP, the Director of DPP may remove the impartial hearing officer and appoint another impartial hearing officer.
3. The impartial hearing officer may order reimbursement for parents for the unilateral placement of their child if the Part C service placement is determined to be inappropriate and the parent's placement is deemed appropriate.
4. The decision of the impartial hearing officer shall be binding upon both parties unless the decision is appealed.

5. Any party who feels aggrieved by the findings and decision of the impartial hearing officer may appeal to a district court or may bring a civil action under 20 U.S.C. 1480[1], section 680[1] of the Individuals with Disabilities Education Act.
  6. The Director of DPP shall only be responsible for paying administrative costs related to the hearing, including necessary expenses incurred by the impartial hearing officer and stenographic services. The parties involved shall each be responsible for any legal or other fees that occur.
  7. Every party to a controversy shall comply with these procedures. Failure of one party to do what is required and which substantially prejudices the proceedings may necessitate a request by the impartial hearing officer of a court order for compliance.
  8. In the event that parents of an infant or toddler with a disability prevail, a court of competent jurisdiction, in its discretion, may award reasonable attorney's fees as part of the costs to the parents. The awarding of attorney's fees is subject to the limitation found under 20 U.S.C 1415(e) (4) of the Individuals with Disabilities Education Improvement Act 2004 as Amended.
- R. Status of Child During Proceedings
1. During the pendency of any proceeding involving a complaint regarding Part C services, unless the Part C agency and the parent, legal guardian, or surrogate parent of the child with a disability otherwise agree, the child must continue to receive the appropriate early intervention services currently being provided.
  2. If the complaint involves an application for initial services under Part C, the child must receive those services that are not in dispute.

**DISPUTE RESOLUTION PROCEDURES FOR STATE (FORMAL)  
COMPLAINT PROCEDURE**

The Developmental Disabilities Program of Department of Health and Human Services has adopted written procedures for receiving and resolving any written complaint that any public agency or private service provider who receives Part C funds is violating a requirement or regulations of Part C the IDEA. Parents are informed regarding these system complaint procedures at least twice annually at the time when IFSPs are routinely

evaluated and rewritten. (Complaint procedures-303.510, 303.511, & 303.512 [a] [b] & [c])

Dispute/complaint information includes the process for filing an informal or State (formal) Complaint regarding systemic issues that violate the requirements or regulations of Part C under the Individuals with Disabilities Education Improvement Act of 2004 (IDEA) and/or issues regarding identification, evaluations, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family.

#### I. Filing a Complaint

- A. An individual or organization may file a signed complaint form (pg.25) with the Developmental Disability Program (DDP), Department of Public Health and Human Services.
- B. Limitations. The alleged violation must have occurred not more than one year before the date that the complaint is received by the public agency unless a longer period is reasonable because:
  - 1. The alleged violation continues for that child or other children; or
  - 2. The complainant is requesting reimbursement or corrective action for a violation that occurred not more than three years before the date on which the complaint is received by the public agency.

#### II. Minimum State Complaint Procedures

- A. DDP shall include in its complaint procedures a time limit of 60 calendar days after a complaint is filed.
- B. Carry out an independent on-site investigation, if DDP determines that such an investigation is necessary.
- C. Give the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- D. Review all relevant information and make an independent determination as to whether the public agency is violating a requirement of Part C of the Act or of this Part.
- E. Issue a written decision to the complainant that addresses each allegation in the complaint and contains:
  - 1. Findings of fact and conclusions.
  - 2. The reasons for the lead agency's final decision.
  - 3. Remedies for denial of appropriate services. In resolving a complaint in which it finds a failure to provide appropriate services, DDP, pursuant to its general supervisory authority under Part C of the Act, must address:
    - a. How to remedial the denial of those services, including, as appropriate, the awarding of monetary reimbursement or other corrective action appropriate to the needs of the child and the child's family; and
    - b. Appropriate future provision of services for all infants and toddlers with disabilities and their families.
  - 4. Implementation of DDP's final decision, if needed, including:
    - a. Technical assistance activities; and
    - b. Negotiations; and corrective actions to achieve compliance.

- F. Permit an extension of the time limit under paragraph (a) of this section only if exceptional circumstances exist with respect to a particular complaint.
- G. Complaints filed under this section and due process hearings.
  - 1. If a written complaint is received that is also the subject of 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 paragraphs (a) and (b) of this section.
  - 2. If an issue is raised in a complaint filed under this section that has previously been decided in a due process hearing involving the same parties-
    - a. The hearing decision is binding; and
    - b. The DDP must inform the complainant to that effect.
  - 3. A complaint alleging a public agency's or private service provider's failure to implement a due process decision must be resolved by DDP.

**These procedures are taken directly from Component 12 of Montana's State Plan for Federal Fiscal Year 2006 Under Part C of the Individuals with Disabilities Education Act (IDEA)**

### **Montana's Request for Medication For Part C**

Parent(s), legal guardian(s), surrogate parent(s) or a Part C provider can initiate the mediation process regarding a dispute/ complaint. This process will allow both parties to explore options and solutions in an informal way. Both parties involved must agree to mediation. Mediation does not delay or deny a due process hearing request.

**Please check who is filing for mediation:  Parent  Agency**

Name of parent or agency: \_\_\_\_\_

Address: \_\_\_\_\_

Contact person, if agency: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

DPHHS will notify the other party in writing of the request for mediation. If the other party does not wish to participate, DPHHS will notify the requesting party of the response.

**Other party's information:**

Name of parent or agency: \_\_\_\_\_

Address: \_\_\_\_\_

Contact person, if agency: \_\_\_\_\_

Telephone: \_\_\_\_\_

State the specific reason(s) for requesting mediation. Include a description of the nature of the dispute/complaint, including facts relating to the problem. (Use additional sheets if necessary)

Your proposed resolution of the problem: (Use additional sheets if necessary)

**Send the completed form to:     Director of the Developmental Disabilities Program  
  111 Sanders Street  
  P.O. Box 4210  
  Helena, MT 59604**

**If you have, any questions please feel free to contact the Part C Coordinator at (406) 444-5647**

**Montana's Request for a Due Process Hearing  
For Part C**

A parent(s), surrogate parent(s), or legal guardian(s) may request a due process hearing if they and the early intervention program are unable to resolve a dispute or complaint.

\_\_\_\_\_

Child's name

---

Part C Service Provider

---

Name of the party requesting the hearing

---

Relationship to the child

---

Address of the party requesting the hearing

---

Daytime telephone number

State the specific reasons for requesting a hearing. Include a description of the nature of the dispute, including facts relating to the problem. (use additional sheets if necessary)

I/we agree to participate in a mediation process: \_\_\_\_\_ YES \_\_\_\_\_ NO  
(This will not delay or deny the opportunity for a hearing.)

**Send the completed form to:      Director of the Developmental Disabilities Program  
   111 Sanders Street  
   P.O. Box 4210  
   Helena, MT 59604**

**If you have, any questions please feel free to contact the Part C Coordinator at (406) 444-5647**

## **Montana's Notice of a State (Formal) Complaint For Part C**

Anyone can file a written State "Formal" Complaint that raises systemic issues concerning a violation of a requirement of Part C Services under the Individuals with Disabilities Education Improvement Act (IDEA).



**Please check who is filing the complaint:**  Parent     Agency     Other\_\_\_\_\_

Name of organization or person: \_\_\_\_\_

Address: \_\_\_\_\_

Contact person, if organization: \_\_\_\_\_

Phone: \_\_\_\_\_ Other Phone: \_\_\_\_\_

Email: \_\_\_\_\_

**Reason for complaint:**  violation of Part C requirements     Individual Child Complaint

Identify the agency or agencies that you believe have violated Part C requirements:

\_\_\_\_\_

If child-specific, name of child: \_\_\_\_\_

What are the facts related to this complaint? (Use additional sheets of paper if more space is needed.)

**Send the completed form to:**     **Director of the Developmental Disabilities Program**  
**111 Sanders Streets**  
**P.O. Box 4210**  
**Helena, MT 59602**

**If you have, any questions please feel free to contact the Part C Coordinator at (406) 444-5647**