

MONTANA'S PART C PROCEDURAL SAFEGUARDS

Montana's statewide system includes written procedures for the timely administrative resolution of complaints through mediation, Montana's state complaint procedures, and due process hearing procedures. Montana's DDP allows parents and EIS agencies to resolve informal complaints at the local level, however, the EIS agency must (1) review with the parents all dispute resolution options they can exercise and (2) review with the parents they can choose another dispute resolution option at any time.

Mediation

Montana's DDP makes available to parties to disputes involving any matter under this part the opportunity for mediation meeting the requirements in §303.431.

Montana's State complaint procedures

Montana's DDP adopted written State complaint procedures to resolve any State complaints filed by any party regarding any violation of this part meeting the requirements in §303.432 through §303.434.

Due process hearing procedures

Montana's DDP established written due process hearing procedures to resolve complaints with respect to a particular child regarding any matter identified in §303.421(a), by adopting the Part C due process hearing procedures under section 639 of the Act that:

- Meet the requirements in §303.435 through §303.438; and
- Provide a means of filing a due process complaint regarding any matter listed in §303.421(a).

Status of a child during the pendency of a due process complaint

During the pendency of any proceeding involving a due process complaint, unless the DDP and parents of an infant or toddler with a disability otherwise agree, the child must continue to receive the appropriate early intervention services in the setting identified in the IFSP consented to by the parents.

If the due process complaint involves an application for initial services under Part C of the Act, the child must receive those services not in dispute.

(Approved by Office of Management and Budget under control number 1820-0678 and 1820-NEW)

(Authority: 20 U.S.C. 1415(e), 1415(f)(1)(A), 1415(f)(3)(A)-(D), 1439)

Mediation (§303.431)

Montana's DDP ensures procedures are established and implemented to allow parties to disputes involving any matter under this part, including matters arising prior to the filing of a due process complaint, to resolve disputes through a mediation process at any time.

The procedures must meet the following requirements:

- (1) The procedures ensure the mediation process:
 - Is voluntary on the part of the parties;
 - Is not used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under Part C of the Act; and
 - Is conducted by a qualified and impartial mediator who is trained in effective mediation techniques.
- (2) Qualified mediators:
 - The State must maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of early intervention services.
 - The DDP must select mediators on a random, rotational, or other impartial basis.
- (3) Montana's DDP will bear the cost of the mediation process, including the costs of meetings.
- (4) Each session in the mediation process must be scheduled in a timely manner and must be held in a location convenient to the parties to the dispute.
- (5) If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement setting forth the resolution and that:
 - States all discussions occurring during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
 - Is signed by both the parent and a representative of the DDP who has the authority to bind such agency.
- (6) A written, signed mediation agreement under this paragraph is enforceable in any State court of competent jurisdiction or in a district court of the United States.
- (7) Discussions occurring during the mediation process must be confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding of any Federal court or State court of a State receiving assistance under this part.

Impartiality of mediator:

- (1) An individual who serves as a mediator under this part:
 - May not be an employee of the DDP or an EIS provider involved in the provision of early

- intervention services or other services to the child; and
- Must not have a personal or professional interest conflicting with the person's objectivity.

(2) A person who otherwise qualifies as a mediator is not an employee of a DDP or an early intervention provider solely because he or she is paid by the agency or provider to serve as a mediator.

Meeting to encourage mediation:

Montana's DDP established procedures to offer to parents and EIS agencies choosing not to use the mediation process, an opportunity to meet, at a time and location convenient to the parents, with a disinterested party:

- (1) Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center, or community parent resource center in the State established under section 671 or 672 of the Act; and
- (2) Who would explain the benefits of, and encourage the use of, the mediation process to the parents.

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(Authority: 20 U.S.C. 1415(e), 1439(a)(8))

State Complaint Procedures (§303.432)

Montana's DDP established written policies and procedures for:

- (1) Resolving any complaint, including a complaint filed by an organization or individual from another State, meeting the requirements §303.4340, by providing for the filing of a complaint with the DDP; and
- (2) Widely disseminating to parents and other interested individuals, including parent training and information centers, Protection and Advocacy (P&A) agencies, and other appropriate entities, under §303.432 through §303.434.

Remedies for denial of appropriate services:

In resolving a complaint in which the DDP found a failure to provide appropriate services, the DDP, pursuant to its general supervisory authority under Part C of the Act, will address:

- (1) The 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 the infant's or toddler's family (such as compensatory services or monetary reimbursement); and

- (2) Appropriate future provision of services for all infants and toddlers with disabilities and their families.

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(Authority: 20 U.S.C. 1439(a)(1))

Minimum State complaint procedures (§303.433)

Montana's DDP established complaint procedures with a time limit of 60 days after a complaint is filed under §303.434 to:

- (1) Carry out an independent on-site investigation, if the DDP determines an investigation is necessary;
- (2) Provides the complainant opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
- (3) Provide the DDP, public agency, or EIS provider with an opportunity to respond to the complaint, including, at a minimum:
 - At the discretion of the DDP, a proposal to resolve the complaint; and
 - An opportunity for a parent who has filed a complaint and the DDP, public agency, or EIS provider to voluntarily engage in mediation, consistent with §303.430(b) and §303.431;
- (4) Review all relevant information and make an independent determination as to whether the DDP, public agency, or EIS provider is violating a requirement of Part C of the Act or of this part; and
- (5) Issue a written decision to the complainant addressing each allegation in the complaint and contains:
 - Findings of fact and conclusions; and
 - The reasons for the DDP's final decision.

Time extension; final decision; implementation:

The DDP's procedures also will:

- (1) Permit an extension of the time limit if:
 - Exceptional circumstances exist with respect to a particular complaint; or
 - The parent (or individual or organization) and, if mediation is available to the individual or organization under State procedures, and the DDP, public agency or EIS provider involved agree to extend the time to engage in mediation; and
- (2) Include procedures for effective implementation of the DDP's final decision, if needed, including:

- Technical assistance activities;
- Negotiations; and
- Corrective actions to achieve compliance.

Complaints filed under this section and due process hearings §303.430(d):

- (1) If a written complaint is received and is also the subject of a due process hearing under §303.430(d), or contains multiple issues of which one or more are part of that hearing, the State must set aside any part of the complaint being addressed in the due process hearing until the conclusion of the hearing. However, any issue in the complaint not a part of the due process hearing must be resolved using the time limit and procedures described.
- (2) If an issue is raised in a complaint filed under this section has previously been decided in a due process hearing involving the same parties:
 - The due process hearing decision is binding on that issue; and
 - The DDP must inform the complainant to that effect.
- (3) A complaint alleging DDP, public agency, or EIS provider’s failure to implement a due process hearing decision must be resolved by the DDP.
(Approved by Office of Management and Budget under control number 1820-NEW)
(Authority: 20 U.S.C. 1439(a)(1))

Filing a complaint (§303.434)

An organization or individual may file a signed written complaint.

The complaint must include:

- (1) A statement the DDP, public agency, or EIS provider has violated a requirement of Part C of the Act;
- (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 name and address of the residence of the child;
 - The name of the EIS provider serving the child;
 - A description of the nature of the problem of the child, including facts relating to the problem; and
 - A proposed resolution of the problem to the extent known and available to the party at the time the complaint is filed.

The complaint must allege a violation occurred not more than one year prior to the date that the complaint is received in accordance §303.432.

The party filing the complaint must forward a copy of the complaint to the public agency or EIS provider serving the child at the same time the party files the complaint with the DDP.

(Approved by Office of Management and Budget under control number 1820-NEW)
(Authority: 20 U.S.C. 1439(a)(1))

State Part C Due Process Hearing Procedures under Section 639 of the Act

Montana chose to adopt the Part C due process procedures under Section 639 of the Act and consistent with §303.435 through 303.438.

Appointment of an impartial due process hearing officer (§303.435) Qualifications and duties:

Whenever a due process complaint is received under §303.430(d), a due process hearing officer must be appointed to implement the complaint resolution process in this subpart. The person must:

- (1) Have knowledge about the provisions of this part and the needs of, and early intervention services available for, infants and toddlers with disabilities and their families; and
- (2) Perform the following duties:
 - Listen to the presentation of relevant viewpoints about the due process complaint.
 - Examine all information relevant to the issues.
 - Seek to reach a timely resolution of the due process complaint.
 - Provide a record of the proceedings, including a written decision.

Definition of impartial:

- (1) Impartial means the due process hearing officer appointed to implement the due process hearing under this part:
 - Is not an employee of the DDP or an EIS provider involved in the provision of early intervention services or care of the child; and
 - Does not have a personal or professional interest conflicting with his or her objectivity in implementing the process.
- (2) 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 under this part.

(Authority: 20 U.S.C. 1439(a)(1))

Parental rights in due process hearing proceedings (§303.436)

The DDP will ensure the parents of a child referred to Part C are afforded the rights in the due process hearing carried out under §303.430(d).

Rights:

Any parent involved in a due process hearing has 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.

(Authority: 20 U.S.C. 1439(a))

Convenience of hearings and timelines (§303.437)

Any due process hearing conducted must be carried out at a time and place reasonably convenient to the parents.

The DDP must ensure, not later than 30 days after the receipt of a parent's due process complaint, the due process hearing required is completed and a written decision mailed to each of the parties.

A hearing officer may grant specific extensions of time beyond the period set out at the request of either party.

(Authority: 20 U.S.C. 1439(a)(1))

Civil action (§303.438)

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 under section 639(a)(1) of the Act.

(Authority: 20 U.S.C. 1439(a)(1))