

# Procedural Safeguards Notice



Revised 2013

WVBT services and supports are provided under Part C of the Individuals with Disabilities Education Act (IDEA) and administered through the West Virginia Department of Health and Human Resources, Office of Maternal, Child and Family Health.

Dear Family,

Welcome to West Virginia Birth to Three!

You are receiving this booklet because you have been referred to, or are receiving West Virginia Birth to Three (WVBTT) services. WVBTT services are provided under a federal law, Part C of the Individuals with Disabilities Education Act (IDEA). This part of the law covers services for infants and toddlers with disabilities or developmental delays and includes certain rights for families of these children. These rights are referred to as procedural safeguards and begin when a child is referred to WVBTT.

The purpose of early intervention is to provide each family of an infant or toddler receiving WVBTT services with information to make decisions about how to best support their child's development. Procedural safeguards help to assure that services and supports are provided in a way that meets the unique needs of your child and family.

There will be times throughout your participation in WVBTT when your service coordinator will give you a copy of these procedural safeguards and review them with you. You can also ask for a copy at other times.

It is important to us that you understand your rights. This booklet includes a general version of your rights, definitions of terms from Part C of IDEA, and more specific details about your procedural safeguards. Because this booklet is an official notice of your rights under a federal law, we have to use some words from the law that might not be familiar to you. If you need help in understanding any part of this information, please feel free to talk with your early intervention team, the WVBTT State Office, or an advocacy group such as West Virginia Parent Training and Information Center. Contact numbers are listed in the back of this booklet. We want to be sure that WVBTT services are meeting your family's needs.

Sincerely,  
Pamela Roush  
Director  
WVBTT

## OVERVIEW OF GENERAL PARENT RIGHTS

The general rights that parents have in West Virginia Birth to Three (WVBTT) include the following:

- The right to choose to participate or not in WVBTT.
- The right to give written permission before any evaluations or services are provided.
- The right to timely evaluations and assessments.
- The right to receive timely notice of meetings and information about what will happen in meetings.
- The right to participate as a member of the team working with your child and family.
- The right to receive information about evaluations, assessments, services, and changes considered in a way that is easily understood.
- The right to know that permission is voluntary, and any service not wanted can be refused without jeopardizing services that are wanted.
- The right to evaluation/assessment, Individualized Family Service Plan (IFSP) development and services, and service coordination at no charge.
- The right, if the child is eligible for WVBTT, to receive appropriate early intervention services as identified in the IFSP.
- The right to a service coordinator who helps to coordinate WVBTT services and provides information about other resources that the family wants to know more about.
- The right to receive timely written notice before anyone in WVBTT proposes or refuses a change in a child's eligibility or services under WVBTT.
- The right to have personally identifiable information be private and not be shared with anyone unless written permission is given by the parent, or it is otherwise allowed by law.
- The right to review the child/family's early intervention record at the Regional Administrative Unit (RAU).
- The right to copies of any WVBTT assessments, IFSP, or other records.
- The right to have ways to settle disagreements including asking for help to resolve the issue, filing a state complaint, or asking for a due process hearing.

In addition to these general rights, parents and others have a right to be notified of specific procedural safeguard protections required under federal regulations and assured through WVBTT. The remainder of this booklet describes those specific procedural safeguards.

## DEFINITIONS

**Day** means calendar day unless otherwise indicated.

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

**Disclosure** means to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means including oral, written, or electronic means to any party except the party identified as the party that provided or created the record.

**Early Intervention Record** means all educational records regarding a child that are required to be collected, maintained, or used under Part C of IDEA. Each child's primary educational record is maintained at the RAU for the county of the child's residence.

**Evaluation and Assessment** means that all eligible children will have access to early intervention services without regard to race, culture, religion, disability, or ability to pay. Eligibility is decided by an evaluation of the child within 45 days of the referral. The evaluation must be done by a multidisciplinary team of two or more qualified professionals who examine the child's medical history, development, and current abilities. If the child is eligible for services, the child and family have the right to ongoing assessments of the child's strengths, skill levels, progress, and needs.

**Impartial** means that the person appointed to handle the complaint process is not an employee of any agency or other entities involved in the provision of early intervention services or care of the child and does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process. A person who otherwise meets the requirements of impartial is not considered an employee of an agency solely because the person is paid by the agency to implement the complaint resolution process.

**Individualized Family Service Plan** within 45 days of referral, each eligible child and family must have a written Individualized Family Service Plan (IFSP) that includes the family's concerns, priorities, and resources for their child as well as the early intervention services needed. The IFSP is written for a year or until the child's third birthday and is reviewed at least every six months.

The IFSP includes:

- The major outcomes for the child and family;
- How progress will be measured;
- What services will be provided to achieve the outcomes;
- Where services will be provided;
- When services will begin and for how often and how long; and

- Transition strategies to support the child's exit from Part C at his/her third birthday or earlier.

**Multidisciplinary** means the involvement of two or more disciplines or professions in the provision of integrated and coordinated services including evaluation and assessment activities and development of the IFSP.

**Non Discriminatory** means that the evaluation and assessment of children and families under WVBTT/Part C shall be administered in a manner that assures at a minimum: (1) tests and other evaluation materials and procedures are administered in the native language of the parents or other mode of communication, unless it is clearly not feasible to do so; (2) any assessment and evaluation procedures and materials used are not to be racially or culturally discriminatory; (3) no single procedure is used as the sole criterion for determining a child's eligibility under this part; and (4) evaluations and assessments are conducted by qualified personnel.

**Parent** As used here, "parent" means: (1) a natural or adoptive parent of a child; (2) a guardian; (3) a person acting in the place of a parent (such as a grandparent or stepparent 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 the requirements of Part C.

**Participating Agency** means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in Part C of the IDEA and its implementing regulations with respect to a particular child. A participating agency includes WVBTT, RAUs, and any individual or entity that provides any Part C services (including service coordination, evaluations and assessments, and other Part C services) but does not include primary referral sources, public agencies, or private entities that act solely as funding sources for Part C services.

**Personally Identifiable Information** means information that includes but is not limited to: (1) the name of your child, your name, or the name of other family members; (2) the address of your child; (3) a personal identifier, such as your child's or your social security number or a biometric record; (4) other indirect identifiers, such as the child's date of birth, place of birth, and mother's maiden name; (5) other information that alone or in combination is linked or linkable to a specific child that would allow a reasonable person in the early intervention system who does not have personal knowledge of the relevant circumstance, to identify the child with reasonable certainty; or (6) information requested by a person who WVBTT reasonably believes knows the identity of the child to whom the early intervention record relates.

**Regional Administrative Units (RAUs)** receive a grant from the Office of Maternal, Child and Family Health to conduct identified components of the WVBTT system at the regional level. Core responsibilities of the RAUs include: child find and public awareness; providing access to a central directory of services, research, and resources; interagency collaboration; quality assurance activities; linking families to leadership opportunities and supports; linking families to

other families of children with special needs; and serving as the system point of entry for all referrals of children living in the counties of the region.

**West Virginia Birth to Three (WVBTT)** is the State's system of early intervention services for all eligible infants, toddlers and their families. The West Virginia Department of Health and Human Resources (DHHR) is designated by the Governor as the State's lead agency responsible for assuring that the system meets all requirements of the Individuals with Disabilities Education Act (IDEA), Part C. The WVBTT early intervention system is administered through DHHR by the Office of Maternal, Child and Family Health (OMCFH). More information about WVBTT is available at [www.wvdhhr.org/birth23](http://www.wvdhhr.org/birth23).

## **WEST VIRGINIA BIRTH TO THREE PROCEDURAL SAFEGUARDS NOTICE**

These WVBTT Procedural Safeguards describe your child's and family's rights and protections as defined by Part C of the Individuals with Disabilities Education Act (IDEA).

This booklet uses language contained in **34 CFR 303-Part C Regulations**. The content of this booklet describes and serves as notice on each of the specific procedural safeguards you are entitled to under the WVBTT system.

## **THE RIGHT TO INFORMED PARENTAL CONSENT AND ABILITY TO DECLINE SERVICES**

**Consent** means that you:

- Have been fully informed of all information relevant to the activity for which consent is sought, in your Native (primary) language as defined in this section;
- Understand and agree in writing to the carrying out of the activity for which your consent is sought, and the consent form describes that activity and lists the early intervention records (if any) that will be released and to whom they will be released; and
- Understand that the granting of consent is voluntary on your part, and you may revoke (or take back) your consent at any time.

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

Your written consent must be obtained before:

- Any evaluations or assessments of your child are conducted;
- Early intervention services are provided to your child;
- Public benefits are used if that use would result in a cost to you; and
- Disclosure of personally identifiable information consistent with consent requirements under confidentiality (303.414).

If you do not consent to evaluations, assessments, or early intervention services, the RAU or local service provider/practitioner participating in Part C shall make reasonable efforts to ensure that you:

- Are fully aware of the nature of the evaluation and assessment of your child or early intervention services that would be available; and
- Understand that your child will not be able to receive the evaluation and assessment or early intervention services unless written consent is given.

WVBTT may not use the due process hearing procedures under Part C or Part B of the IDEA to challenge your refusal to provide any consent required. In addition, as the parent of a child eligible under the WVBTT, you may determine whether you, your child or other family members will accept or decline any early intervention services under this system at any time in accordance with West Virginia law and federal regulations.

Participation in the Part C early intervention system for infants and toddlers is voluntary for you and your family. You may:

- Accept all services agreed to on the IFSP;
- Decline all services agreed to on the IFSP;
- Accept one or some of the services agreed to on the IFSP and decline other service(s); or
- Decline a service after first accepting it without jeopardizing other early intervention services under WVBTT.

### **Native Language**

*Native language*, when used with respect to an individual who is limited English proficient or LEP (as that term is defined in section 602(18) of the Act), means:

- The language normally used by that individual or, in the case of a child, the language normally used by the parents of the child except as provided below; and
- For evaluations and assessments conducted pursuant to §303.321(a)(5) and (a)(6), the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation or assessment.

*Native language*, when used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, means the mode of communication that is normally used by the individual (such as sign language, Braille, or oral communication).

<b>THE RIGHT TO PRIOR WRITTEN NOTICE AND PROCEDURAL SAFEGUARDS NOTICE</b>
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Prior written notice must be provided to you within a reasonable time before a provider agency or service provider participating in WVBTT proposes or refuses to initiate or change the identification, evaluation, or placement of your child or the provision of early intervention

services to your child and your family. Neither a practitioner providing early intervention services on an IFSP nor the practitioner's provider agency shall revise services or eligibility without going through the IFSP team process.

The notice must be sufficiently detailed to inform you about:

- The action that is being proposed or refused;
- The reasons for taking the action; and
- All procedural safeguards that are available under WVBTT including a description of mediation, how to file a state complaint and a due process complaint and any timelines under these procedures.

The notice must be:

- Written in language understandable to the general public and provided in your primary (native) language or mode of communication unless it is clearly not feasible to do so.
- If your primary (native) language, as defined above, or other mode of communication used by you is not a written language, the RAU or service coordinator participating in the WVBTT shall take steps to ensure that:
  - The notice is translated orally or by other means to you in your primary language or other mode of communication;
  - You understand the notice; and
  - There is written evidence that these requirements have been met.

## **CONFIDENTIALITY AND OPPORTUNITY TO EXAMINE RECORDS**

In accordance with the confidentiality of information procedures outlined in this document, as a parent of an infant or toddler who has been referred to or receives services under WVBTT, you:

- Are ensured of the protection of confidentiality of personally identifiable data, information, and records collected or maintained pursuant to Part C by participating agencies including WVBTT and enrolled service coordinators or service providers, in accordance with the protections under the Family Educational Rights and Privacy Act (FERPA) in 20 U.S.C. 1232g and 34 CFR Part 99; and
- Are afforded the opportunity to inspect and review all early intervention records collected, maintained, or used under WVBTT including records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, provision of early intervention services, individual complaints involving your child, or any part of the child's early intervention record under WVBTT.

To meet state and federal data collection and reporting requirements and timely communication and coordination of services for your family, WVBTT maintains a secure electronic database of



your child's and family's information including name, address, date of birth, telephone number, personal identification number, eligibility, services, and service providers.

WVBTT must ensure that the parents of a child referred under Part C are afforded the right to confidentiality of personally identifiable information including the right to written notice of and written consent to the exchange of that information among agencies consistent with federal and West Virginia laws.

WVBTT ensures the effective implementation of the safeguards by each participating agency including RAUs, service coordinators and direct service practitioners that are involved in the provision of early intervention services and make available to you an initial copy of your child's early intervention record at no cost to you.

The confidentiality procedures described apply to the personally identifiable information of a child and the child's family that is contained in early intervention records collected, used or maintained under Part C by WVBTT, RAUs, service coordinators, and direct service practitioners. Procedural safeguard protections apply from the point in time when the child is referred for early intervention services under Part C until the participating agency is no longer required to maintain or no longer maintains the child and family's information under applicable federal and state laws.

## **NOTICE TO PARENTS**

WVBTT must give adequate notice when your child is referred under Part C of IDEA, to fully inform you about the requirements of confidentiality including:

- A description of the children on whom personally identifiable information is maintained the types of information sought, the methods West Virginia intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;
- A summary of the policies and procedures that participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information;
- A description of all the rights of parents and children regarding this information including their rights under the Part C confidentiality provisions; and
- A description of the extent that the notice is provided in the native languages of the various population groups in West Virginia.

## **ACCESS RIGHTS**

You have a right to inspect and review any early intervention records relating to your child collected, maintained or used by WVBTT. The RAU shall comply with your request to inspect and review records without unnecessary delay and before any meeting regarding an IFSP or

hearing relating to identification, evaluation, or placement or the provision of appropriate early intervention services to your child. Such records will be made available to you no later than ten (10) calendar days after the request has been made.

The right to inspect and review early intervention records includes:

- The right to a response from the RAU or respective service coordinators or service practitioners to reasonable requests for explanations and interpretations of the early intervention record;
- The right to request that the RAU provide copies of the early intervention records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and
- The right to have someone who is representing you inspect and review the record with your written consent.

An RAU may presume that a parent has the 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 West Virginia law governing such matters as guardianship, separation, divorce, custody, and foster care.

#### **RECORD OF ACCESS**

Each participating agency shall keep a record of parties obtaining access to early intervention records collected, maintained or used under Part C of IDEA (except access by you and authorized employees and representatives of the participating agency) including the name of the party, the date access was given, and the purpose for which the party is authorized to use the early intervention records.

#### **RECORDS ON MORE THAN ONE CHILD**

You have the right to inspect and review only the information relating to your child or to be informed of that specific information pertaining to your child if any record includes information on more than one child.

#### **TYPES OF AND LOCATIONS OF INFORMATION**

WVBTT maintains an electronic copy of all referrals. The original educational record (in both paper copy and electronic version) for each child eligible for WVBTT is maintained at the RAU covering the child's county of residence. Your child's record includes copies of notices, signed consents, intervention activity notes, evaluation/assessment reports, IFSPs, and any other relevant communications. Service coordinators and direct service practitioners may have copies

of assessments and IFSPs relevant to their provision of services to your child. These documents are protected under the same confidentiality requirements as described in these procedural safeguards.

### **FEES FOR RECORDS**

WVBTT may charge a fee for copies of records if the fee charged for the copies does not effectively prevent you from exercising your right to inspect and review your records. WVBTT must provide, at no cost to you, a copy of each evaluation and assessment of your child, family assessment, and IFSP as soon as possible after each IFSP meeting; and WVBTT cannot charge a fee to search or to retrieve information under Part C of IDEA.

### **AMENDMENT OF RECORDS AT A PARENT'S REQUEST**

If you believe that information in early intervention records collected, maintained or used under Part C is inaccurate, misleading, or violates the privacy or other rights of you or your child, you may submit a written request to the WVBTT State Office to amend the information.

- WVBTT must decide whether to amend the information in accordance with the request within a reasonable period of time after it receives the request.
- If WVBTT refuses to amend the information as you request, you will be informed in writing of the refusal and be advised of the right to a hearing.

### **OPPORTUNITY FOR A HEARING**

WVBTT on request shall provide you an opportunity for a hearing to challenge information in your child's early intervention records to ensure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of your child or you. Parents may request a hearing under the procedure in this document provided that such hearing procedures meet the requirements of the hearing procedures under the Family Education Rights & Privacy Act (FERPA), or you may request a hearing directly under FERPA regulations at 34 CFR 99.22.

### **RESULTS OF HEARING**

If as a result of the hearing, WVBTT decides that the information is:

- Inaccurate, misleading or otherwise in violation of the privacy or other rights of your child or you, your records shall be amended accordingly and you will be notified in writing of the amendment; or

- Not inaccurate, misleading or otherwise in violation of the privacy or other rights of your child or you, you will be informed of your right to place in your child's early intervention record, maintained on your child, a statement commenting on the information and providing any reasons for disagreeing with the decision.
- Any explanation placed in the early intervention records of your child under this section must:
  - Be maintained by WVBTT as part of the records of your child as long as the record or contested portion (that part of the record with which you disagree) is maintained by WVBTT; and
  - If the early intervention records of your child or the contested portion are disclosed by WVBTT to any party, the explanation must also be disclosed to the party.

<b>CONSENT PRIOR TO DISCLOSURE OR USE</b>
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Except as provided in this section, your prior parental consent must be obtained before personally identifiable information is:

- Disclosed to anyone other than authorized representatives, officials, or employees of WVBTT who are collecting, maintaining, or using the information under Part C, subject to this section; or
- Used for any purpose other than meeting a requirement of Part C.

The WVBTT system early intervention agencies/practitioners assigned to your child and family who have access to your early intervention records if needed to provide your child and family's service, include the following:

- The RAU staff responsible for the system point of entry referral, maintenance of your child's electronic record in the WVBTT database.
- Interim service coordinator and ongoing service coordinator responsible for the coordination of your early intervention services.
- Early intervention practitioners responsible for the provision of your early intervention services, and authorized individuals in their respective agencies.
- The DHHR state personnel, in the role as the lead agency responsible for the administration of the WVBTT early intervention system.

WVBTT or other participating agencies may not disclose personally identifiable information as defined in this document, to any party that is not part of the WVBTT Part C system without your consent unless authorized to do so under one of the following:

- Under 34 CFR 401 (d), WVBTT is required to notify the State education agency and the local county school system for the area in which the child resides that the child will shortly reach the age of eligibility for preschool services under Part B of the Act at three years of age. WVBTT will forward your child's name and date of birth and your name and contact information to the county school system shortly before your child's third birthday. Your local county school system will offer you the opportunity to accept or decline eligibility determination for Part B services.

- One of the exceptions enumerated in 34 CFR 99.31 (where applicable to Part C) which are expressly adopted to apply to Part C through this reference. In applying the exceptions in 34 CFR 99.31 to Part C of IDEA, WVBTT and participating service providers must also comply with the pertinent conditions in 34 CFR 99.32, 99.33, 99.34, 99.35, 99.36, 99.38, and 99.39; in applying these provisions in 34 CFR Part 99 to Part C, the reference to:
- 34 CFR 99.30 means §303.414(a).
  - “Education records” means early intervention records as defined in this document.
  - “Educational” means early intervention under Part C.
  - “Educational agency or institution” means the participating agency defined in this document.
  - “School officials and officials of another school or school system” means qualified personnel or service coordinators under Part C.
  - “State and local educational authorities” means WVBTT.
  - “Student” means child under Part C.

## **THE RIGHT TO A SURROGATE PARENT WHEN A PARENT IS NOT AVAILABLE**

WVBTT ensures that the rights of children are protected if:

- No parent, as defined below, can be identified;
- The RAU or service coordinator after reasonable efforts, cannot locate a parent; or
- The child is a ward of the State under the laws of West Virginia.

Parent means:

- A biological or adoptive parent of a child.
- A foster parent, unless State law, regulations, or contractual obligations with a state or local entity prohibit a foster parent from acting as a parent.
- A guardian generally authorized to make early intervention, educational, health or developmental decisions for the child.
- An individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives, or an individual who is legally responsible for the child’s welfare.
- A surrogate parent who has been appointed in accordance with Part C of the IDEA.

Except as provided below, the biological or adoptive parent (or parents with joint custody), when attempting to act as the parent under Part C and when more than one party is qualified to act as a parent, must be presumed to be the parent unless the biological or adoptive parent does not have legal authority to make educational or early intervention service decisions for the child. In assigning surrogate parents for children who are wards of the State or placed in foster care, WVBTT must consult with the public agency that has been assigned.

If a judicial decree or order identifies a specific person or persons listed above to act as the “parent” of a child or to make educational or early intervention service decisions on behalf of a child, then such person or persons shall be determined to be the “parent” for purposes of Part C of IDEA. However, if a provider agency or a public agency provides any services to a child or any family member of that child, that WVBTT provider agency or public agency may not act as a parent for that child under IDEA.

In the case of a child who is a ward of the State, the surrogate parent instead of being appointed by WVBTT under this section, may be appointed by the judge overseeing the infant or toddler’s case provided that the surrogate parent meets the requirements in this section.

An individual is assigned to act as a “surrogate” parent according to the procedures that follow. The procedures include a method for determining whether a child needs a surrogate parent and assigning a surrogate parent to the child. The following criteria are employed when selecting surrogates:

- Surrogate parents are selected in the manner authorized by West Virginia law.
- Public agencies must ensure that a person selected as a surrogate parent:
  - Is not an employee of the lead agency or any other public agency or WVBTT provider that provides early intervention services, education, care, or other services to the child or any family member of the child;
  - Has no personal or professional interest that conflicts with the interest of the child he or she represents; and
  - Has knowledge and skills that ensure adequate representation of the child.
- A person who is otherwise qualified to be a surrogate parent under this section is not an employee of the agency solely because he or she is paid by the agency to serve as a surrogate parent.

A surrogate parent has the same rights as a parent for all purposes under Part C. WVBTT must make reasonable efforts to ensure the assignment of a surrogate parent not more than 30 days after a public agency determines that the child needs a surrogate parent.

<b>SAFEGUARDS</b>
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Each RAU and enrolled service coordinator and direct service practitioner participating in WVBTT must protect the confidentiality of personally identifiable information at collection, maintenance, use, storage, disclosure, and destruction stages. One official at each RAU and each participating agency must assume primary responsibility for ensuring the confidentiality of all personally identifiable information.

All persons collecting or using personally identifiable information must receive training or instruction regarding the State’s policies and procedures under confidentiality and FERPA, 34 CFR Part 99. WVBTT, and each RAU and enrolled service coordination or early intervention

payee agency, must maintain for public inspection a current listing of the names and positions of employees within the agency who have access to personally identifiable information.

## **DESTRUCTION OF INFORMATION**

WVBTT maintains a child's records for a period of five (5) years after the child's exit from WVBTT as needed to provide services to your child under Part C of the IDEA, the General Education Provisions Act (GEPA) provisions in 20 U.S.C. 1232f, and Education Department General Administrative Regulations (EDGAR), 34 CFR parts 76 and 80.

WVBTT destroys hard copies of records after the five (5) year period. However, a permanent electronic record of a child's name, date of birth, parent contact information (including address and phone number), names of service coordinator(s) and early intervention service practitioner(s), and exit data (including year and age upon exit and any programs entered into upon exiting) may be maintained without time limitation.

## **ENFORCEMENT OF THESE REQUIREMENTS**

WVBTT has in effect the policies and procedures including sanctions and the right to file a complaint under §303.432 through 303.434 that WVBTT uses to ensure that its policies and procedures, consistent with §303.401 through 303.417, are followed and that the requirements of IDEA and the Part C regulations are met.

## **THE RIGHT TO FORMAL DISPUTE RESOLUTION OPTIONS**

Formal options for resolving disputes include state complaints, mediation, and impartial due process hearings.

All requests for complaint investigation, mediation, and/or impartial due process hearing are to be filed in writing consistent with these procedures and sent to the WVBTT State Office, addressed to the Continuous Quality Improvement (CQI) Coordinator. Assistance in completing a written request for formal dispute resolution is available to you at your request from your service coordinator or the State CQI Coordinator. No parties are entitled to legal fees from WVBTT under these formal dispute resolution procedures.

### **Mediation**

A statewide mediation system is available to you at any time to ensure that you may voluntarily access a non-adversarial process for the resolution of individual disputes

regarding matters related to Part C of IDEA. Mediation is available for disputes under Part C including any matters arising prior to the filing of a due process hearing.

Mediation is voluntary on the part of all parties. The CQI Coordinator identifies individual mediators to provide early intervention mediation services. Mediators are required to undergo training as a condition of serving as mediators.

The CQI Coordinator shall maintain a list of qualified and impartial mediators who are trained in effective mediation techniques and are knowledgeable in laws and regulations related to the provision of early intervention services. An individual who serves as a mediator under WVBTT:

- May not be an employee of WVBTT or a provider agency that is involved in the provision of early intervention services or other services to the child; and
- Must not have a personal or professional interest that conflicts with the person's objectivity.

A person serving as a mediator is not an employee of the WVBTT or a provider agency solely because he or she is paid by WVBTT to serve as a mediator. The CQI Coordinator shall select mediators on a random, rotational, or other impartial basis.

Mediation cannot be used to deny or delay your right to an impartial due process hearing or any other rights afforded under Part C. You can request mediation alone or simultaneously with a request for an impartial due process hearing and may refuse or withdraw from the mediation process at any time.

A request for mediation shall be in writing, signed and dated by you or, with your consent, your representative. If you wish to file a request for mediation, it is the responsibility of the service coordinator, RAU, and/or the CQI Coordinator to assist you with access to the process in your primary language and/or mode of communication unless it is clearly not feasible to do so and to prepare the request in written form. If your primary mode of communication is sign language or Braille, the request can be made utilizing your primary mode of communication.

The mediation process including issuance of a written mediation agreement, shall be completed within 30 calendar days of the receipt of the request for mediation unless a request for mediation was made at the same time as a request for an impartial due process hearing or complaint investigation. In that case, the mediation must be completed within 15 calendar days to ensure adequate time for completion of the due process proceeding or complaint investigation.

Each session in the mediation process must be scheduled in a timely manner and must be held in a location that is convenient to the parties in the dispute. WVBTT will incur the cost of the mediation process.



If the parties resolve a dispute through the mediation process, the parties must execute a legally binding agreement that sets forth that resolution. The agreement must state that all discussions that occurred during the mediation process shall remain confidential and may not be used as evidence in any subsequent impartial due process hearing or civil proceeding.

Neither the mediator nor any party to a mediation proceeding may record or transcribe discussions held during the mediation.

Any agreement reached at the mediation shall be signed by both the parent and representative of the WVBTT that has the authority to bind such agency before the conclusion of the mediation. The service coordinator will incorporate the terms of the mediation agreement into the IFSP as appropriate.

A written, signed mediation agreement is enforceable in any state court of competent jurisdiction or in a federal district court of the United States. Discussions that occur during the mediation process must be confidential and may not be used as evidence in any subsequent impartial due process hearing or civil proceeding of any federal court or state court.

WVBTT has established procedures to offer you and WVBTT providers that choose not to use the mediation process an opportunity to meet at a time and location convenient to you with a disinterested party:

- Who is under contract with an appropriate alternative dispute resolution entity, or a parent training and information center or community parent resource center in West Virginia established under Section 671 or 672 of IDEA.
- Who explains the benefits of, and encourages the use of the mediation process to you.

### **State Complaints**

You or your representative, other individuals, or organizations, including an organization or individual from another state may file a complaint alleging that WVBTT, an enrolled service coordinator or direct service practitioner, RAU, or any other state agency involved in the early intervention system is violating or has violated a requirement of federal or West Virginia law or WVBTT policies and procedures. If you want to file a complaint, you must file the complaint with the CQI Coordinator in the WVBTT State Office. You may seek assistance with the filing of your complaint by contacting the WVBTT State Office. WVBTT provides a State Complaint brochure and State Complaint form, available on the WVBTT website at <http://www.wvdhhr.org/birth23>.

A complaint must include:

- A written statement that WVBTT, an individual, a RAU, or a practitioner or service coordinator of WVBTT has violated a requirement of Part C Federal regulations or WVBTT policies and procedures;
- The facts on which the complaint is based; and
- The signature and contact information of the complainant and if alleging violations with respect to a specific child:
  - The name and address of the residence of the child;
  - A description of the nature of the problem 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 alleged violation must have occurred not more than one year before the date that the complaint is received by the CQI Coordinator. *The person filing the complaint must forward a copy of the complaint to all parties that the complaint is about at the same time the person files the complaint with the CQI Coordinator.*

During the investigation, the CQI Coordinator:

- Makes a determination if an independent on-site investigation to the local or regional service agency is necessary, and conducts the investigation accordingly.
- Gives the complainant the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint.
- Provides the RAU and/or agency (if necessary) and the person(s) whom the complaint is about, an opportunity to respond to the complaint—including at a minimum:
  - At the discretion of the WVBTT State Office, a proposal to resolve the complaint;
  - Opportunity for the person who has filed the complaint and the other parties to the complaint to voluntarily engage in mediation consistent with this document;
  - Conducts interviews with the complainant, the respondent(s) and any other relevant parties including the RAU and state agencies, if necessary;
  - Reviews all relevant information including the results of any on-site investigation, pertinent written records and documents such as forms, reports and files, and any
  - additional information provided by the party or parties;
  - After reviewing all relevant information, make an independent determination as to whether a violation of a Part C requirement has occurred; and
  - Within 60 days of the date the complaint was filed, issue a written decision to the complainant that addresses each allegation in the complaint and contains:
    - Findings of fact and conclusions
    - The reasons for the final decision

If any party, other than the parent, requests mediation, the request must be in writing and it may only be initiated with the parent's consent. Once the parent's written consent has been obtained to engage in mediation, evidence of that written consent shall be attached to the request for mediation.

In resolving a complaint in which the CQI Coordinator's office finds a failure to provide appropriate services, WVBTT must address:

- 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, if appropriate, compensatory services or the awarding of monetary reimbursement); and
- Appropriate future provision of services for all infants and toddlers with disabilities and their families.

An extension of the 60 day timeline may be permitted only if:

- Exceptional circumstances exist with respect to the complaint; or
- The parent, individual, organization, WVBTT, or early intervention service provider involved in the complaint, agree to extend the time to engage in mediation.

WVBTT has procedures for the effective implementation of the final decision if needed, including technical assistance activities, negotiations, and corrective actions to achieve compliance.

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 that hearing, the CQI Coordinator 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 part of the due process action must be resolved within the 60 calendar day timeline using the complaint procedures described above.

- 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:
  - The hearing decision is binding on that issue; and
  - WVBTT must inform the complainant to that effect.
- A complaint alleging a service provider, another public agency, or WVBTT's failure to implement a due process decision must be resolved through the CQI Coordinator.

**West Virginia BTT CQI Coordinator  
State Office**

WVBTT CQI Coordinator  
Office of Maternal, Child and Family Health  
350 Capitol Street, Room 427  
Charleston, WV 25301  
1-800-642-9704

WVBTT State Complaint forms are available on the website at  
[www.wvdhhr.org/birth23](http://www.wvdhhr.org/birth23)

Written, signed State Complaints are to be mailed to the WVBTT CQI Coordinator at the address above.

## **DUE PROCESS HEARINGS**

A parent may request a due process hearing regarding WVBTT's proposal or refusal to initiate or change the identification, evaluation, placement or provision of appropriate early intervention services by submitting a written request for a due process hearing to the WVBTT CQI Coordinator in the Office of Maternal, Child and Family Health at 350 Capitol Street, Room 427, Charleston, West Virginia 25301. A copy of the request should be sent to any other party involved in the proposal or refusal of identification, evaluation, placement, or provision of services.

If a parent wishes to file a written request for an impartial due process hearing, the service coordinator, RAU, and/or the WVBTT State Office shall assist the parent to access the process in the parent's primary language and/or mode of communication to the maximum extent possible.

The written request for an impartial due process hearing must be filed within one year of the date you know or should have known about the alleged action that forms the basis for the request.

The request must be submitted by the parent or the parent's attorney, must include the name and address of the child, name of the parent submitting the request, description of the facts related to the problem and proposed ways to resolve the problem if known.

When a hearing is requested by the parent, WVBTT will inform the parent of the right to mediation and of any free or low cost legal services available to the parent.

A parent requesting an impartial due process hearing or a person making a request for an impartial due process hearing on a parent's behalf should inform the CQI Coordinator if the parent is to be represented at the impartial due process hearing, no later than five (5) days after the request of the hearing to the CQI Coordinator. However, failure to inform the CQI Coordinator will not preclude the parent from receiving representation from counsel.

WVBTT/Office of Maternal, Child and Family Health will be responsible for assigning an impartial hearing officer. The hearing officer assigned must have knowledge about the provision of Part C and about the needs of and services available for eligible children and their families. The hearing officer will perform the following duties:

- Listen to the presentation of relevant viewpoints about the complaint, examine all information relevant to the issues, and seek to reach a timely resolution of the complaint; and
- Provide a record of the proceedings including a written decision.

The impartial person may not be an employee of any agency involved in the provision of early intervention services or care of the child or child's family. The impartial person may not have a personal or professional interest conflicting with his/her objectivity in the complaint resolution process. A person who otherwise qualifies as above is not an employee of an agency solely

because the person is paid by the agency to implement the due process procedures or medication procedures of WVBTT.

Parties involved in administrative hearings/due process proceedings have the right to:

- be accompanied and advised by counsel and by individuals with special knowledge or training with respect to early intervention services for children eligible under Part C of IDEA;
- present evidence and confront, cross-examine, and compel the attendance of witnesses;
- prohibit the introduction of any evidence at the due process hearing that has not been disclosed to the parent at least five (5) days before the hearing; and
- obtain written or electronic verbatim transcription of the proceeding and obtain written findings of fact and decisions at no cost to the parent.

Due process hearings are conducted at a time and place that is reasonably convenient to the parents. During the proceeding, the child will continue to receive appropriate early intervention services currently provided unless parent and public agency otherwise agree. If a complaint involves application for initial services, the child receives those services that are not in dispute.

Due process hearing proceedings are completed and a written decision is mailed to each party within 30 days after the receipt of a parent's complaint.

A hearing officer may grant specific extensions of time beyond the 30 day period at the request of either party. The provider or involved agency is bound by the decision of the impartial decision-maker and is required to implement the decision unless it is reversed in a court of law. 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 and federal court. WVBTT shall bear the cost of the due process hearing meeting except for the cost of any legal or other representation that the family or other party may choose to have present.

<b>NOTICE OF USE OF PUBLIC INSURANCE</b>
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DHHR has a policy in place to provide at no cost to an eligible child's family Part C services identified on a child's IFSP as needed to meet the identified child or family outcomes, in accordance with Part C of the IDEA. In order to provide these services to eligible children and families, DHHR as the lead agency for administering Part C of IDEA assures the identification and coordination of all available resources within the State including the payer of last resort and fiscal responsibility requirements. As such, the DHHR utilizes public insurance as an available resource for funding the Part C/WVBTT program, with assurance that such use of public insurance will not result in a cost for the family.

Under current policy, DHHR/WVBTT does not charge fees or other costs to families for:

- A. Implementing child find requirements, evaluations and assessment, or service coordination.
- B. Administrative and service coordination activities related to development, review and evaluation of IFSPs, or implementation of procedural safeguards in Subpart E of IDEA and the other components of the statewide system of early intervention services.
- C. Part C services identified as needed on the IFSP.

DHHR/WVBTT does use public insurance funds including Medicaid and CHIP for the provision of WVBTT services without parental consent, but only with the assurance that such use will not result in:

- A decrease in available annual or lifetime coverage or any other insured benefit for the child or parent;
- The child's parents paying for services that would otherwise have been paid for by the public benefits or insurance program;
- An increase in premiums or the cancellation of public benefits for the child or parents;
- An out-of-pocket expense such as the payment of a co-pay or deductible amount incurred in filing a claim; or
- Risk of loss of eligibility for the child or the child's parents for home and community-based waivers based on total health-related costs.

No parent will be required to sign up for or enroll in a public benefits or insurance program as a condition for their child to receive Part C services.

### Third Party Liability (TPL) and Medicaid

TPL refers to coverage by both public insurance and private insurance.

The processing of Medicaid or CHIP claims for WVBTT services will not result in claims against any child's private insurance.

### **ADDITIONAL INFORMATION**

For additional information or assistance in understanding the information in this booklet, you may contact the WVBTT State Office at:

**Telephone: (304) 558-5388 Fax: (304) 558-2183**

**Toll Free in WV: 1-800-642-9704/8522**

**[www.wvdhhr.org/birth23](http://www.wvdhhr.org/birth23)**

**Email: [dhhrwvbtt@wv.gov](mailto:dhhrwvbtt@wv.gov)**

For a full copy of Part C Federal Regulations please visit:  
<http://idea.ed.gov/part-c/regulations/1>

**WVBTT  
Regional Administrative Units**

**Region 1 - Catholic Charities West Virginia**

2000 Main Street, Suite 121

Wheeling, WV 26003

(304) 214-5775; Fax (304) 214-5792

Toll free 1-800-619-5697

**Serves: Brooke, Hancock, Marion, Marshall, Monongalia, Ohio, Tyler, Wetzel**

**Region 2 - The Arc of Mid-Ohio Valley**

912 Market Street

Parkersburg, WV 26101

(304) 485-2000; Fax (304) 865-2072

Toll free 1-866-401-8919

**Serves: Calhoun, Doddridge,  
Gilmer, Harrison, Pleasants, Ritchie, Wirt, Wood**

**Region 3 - River Valley Child Development Service**

1701 Fifth Avenue, Box 14

Charleston, WV 25387

(304) 414-4460; Fax (304) 414-4461

Toll free 1-866-402-2094

**Serves: Clay, Jackson, Kanawha, Roane**

**Region 4 - River Valley Child Development Service**

432 2nd Street

Huntington, WV 25701

(304) 523-5444; Fax (304) 523-5556

Toll free 1-866-982-8855

**Serves: Boone, Cabell, Lincoln, Logan, Mason, Mingo, Putnam, Wayne**

**Region 5 - MountainHeart Community Services**

1200 Harrison Avenue, Suite 220

Elkins, WV 26241

(304) 637-2844; Fax (304) 637-2845

Toll free 1-800-449-7790

**Serves: Barbour, Lewis, Preston, Randolph, Taylor, Tucker, Upshur**

**Region 6 - MountainHeart Community Services**

Work 4 WV Center, 25 Red Oak Shopping Center/P.O. Box 1610

Lewisburg, WV 24901

(304) 647-3810; Fax (304) 647-5521

Toll free 1-866-229-0461

**Serves: Braxton, Greenbrier, Monroe, Nicholas, Pocahontas, Summers, Webster**

**Region 7 - MountainHeart Community Services**

195 Davis Street  
Princeton, WV 24740  
(304) 425-2926; Fax (304) 425-7367  
Toll free 1-866-207-6198

**Serves: Fayette, Mercer, McDowell, Raleigh, Wyoming**

**Region 8 - RESA VIII**

109 South College Street  
Martinsburg, WV 25401  
(304) 267-3595; Fax (304) 267-3599  
Toll free 1-866-681-4957

**Serves: Berkeley, Grant, Hampshire, Hardy, Jefferson, Mineral, Morgan, Pendleton**

**CONTACT INFORMATION:** For additional help in understanding your rights, you may contact anyone of the following:

Your WVBTT Service Coordinator

WVBTT State Office/TA Specialist

1-800-642-8522

TA Specialist Map on the WVBTT Website:

[http://www.wvdhhr.org/birth23/files/TA\\_Coordinator\\_Map\\_2012.pdf](http://www.wvdhhr.org/birth23/files/TA_Coordinator_Map_2012.pdf)

WV Parent Training and Information (WVPTI)

1-800-281-1436 (in WV) or 304-624-1436

Website: <http://wvpti.org>

WV Advocates, Inc.

1207 Quarrier Street

Litton Building, Fourth Floor

Charleston, WV 25301

304-346-0847

1-800-950-5250

Website: <http://wvadvocates.org/>





West Virginia Birth to Three services and supports are provided under Part C of the Individuals with Disabilities Education Act (IDEA), with the West Virginia Department of Health and Human Resources as lead agency and administered through the Office of Maternal, Child and Family Health.

**Earl Ray Tomblin, Governor**

**Karen L. Bowling, Cabinet Secretary**

WVDHHR/BPH/OMCFH/WVBTT/Procedural Safeguards/rev. 4/13