SCOPe:

County Mental Health/Mental Retardation Administrators
Early Intervention Program Directors
Base Service Unit Directors
Early Intervention Service Coordinators

PURPOSE:

The purpose of this Bulletin is to transmit procedures for resolution of non-compliance within the Infant and Toddler Early Intervention System which pertain to any alleged violation of requirements and regulations under Part H of the Individuals with Disabilities Education Act (IDEA) or PA Act 212-1990.

Parents who have filed a complaint that generally affects only a single child or the child's family also have the right to all steps of due process; including conflict resolution, mediation for infants, toddlers and their families or administrative hearings.

This bulletin replaces Office of Mental Retardation Bulletin, #00-93-18, issued November 15, 1993, titled "Part H/PA Act 212-1990 Non-Compliance Resolution Process".

BACKGROUND:

Federal Public Law 99-457, which added Part H to the Education of the Handicapped Act (now the Individuals with Disabilities Education Act [IDEA]), was adopted on October 8, 1986. Part H was amended and reauthorized in October, 1991 by Public Law 102-119. The Department of Public Welfare, Office of Mental Retardation, was designated by the Governor as lead agency for Part H, Infant & Toddler Program of Public Law 99-457 and PA Act 212-1990. To receive federal funds and be in compliance with Federal and State statutes there must be written procedures for a complaint resolution management system to monitor compliance of Federal and State Regulations.

REFER COMMENTS AND QUESTIONS TO:

Ms. Norma Shoppel, Office of Mental Retardation, P.O. Box 2675, Harrisburg, Pennsylvania 17105-2675 telephone (717) 783-5661 or network 8-717-783-5661.
The non-compliance resolution process contains procedures for receiving, investigating and resolving any complaint or disagreement that any public agency or a private provider under contract with a public agency is in violation of the requirements of Part H of The Individuals with Disabilities Education Act or Act 212-1990.

DEFINITIONS:

1. COMPLAINTS

   A complaint is a report stating issues and concerns, charge or allegation filed by individuals, families, groups, organizations, or from any source, indicating a deficiency (ies) in the fulfillment of the requirements, or a violation of the requirements, by public or private agencies, which are or have been receiving financial funding or payment under Part H, Act 212-1990, or other pertinent State or Federal Legislation. The non-compliance Resolution Process is in addition to any other rights defined under State or Federal Law. A few examples of complaints are:

   a. The complaint may involve situations in which the Public agency has failed to meet or establish policies as required by Part H or Act 212-1990;

   b. The complaint may involve public local agencies who have violated the requirements to implement policies as required by Part H or Act 212-1990;

   c. The complaint may relate to a specific concern about the nature of a child’s or his/her family’s services or to specific complaints about individual staff members in a specific agency that has been receiving funding or payment under Part H, Act 212-1990, or other pertinent State or Federal Legislation.

2. COMPLAINANTS

   A complainant is an individual, family, group or organization who files a complaint with the lead agency, the Department of Public Welfare, Office of Mental Retardation, through the four Regional Offices of Mental Retardation.

3. RESPONDENTS

   A respondent is the party against which the complaint is filed. Respondents can be:
a. Any public agency in the State that receives funding under Part H, (i.e. the Department of Public Welfare, the State Interagency Coordinating Council, etc.)

b. Any other public local agency that is involved in the State's early intervention program, (i.e. County MH/MR Program) or,

c. Any private service provider that receives Part H or State Early Intervention funds on a contract basis from a public agency for the provision of certain services or functions.

PROCEDURES:

Information and procedures will be given to the family at the time of the initial individual family service plan (IFSP) meeting and at every IFSP review.

The non-compliance resolution process is in addition to any other rights defined under State and Federal Laws.

A parent who has filed a complaint that generally affects only a single child or the child's family will be provided information concerning, and the opportunity to request all steps of due process, conflict resolution and mediation for infants and toddlers and their families or administrative hearings.

REGISTERING A COMPLAINT

1. Complaints registered against the Lead Agency (Department of Public Welfare) or the State Interagency Coordinating Council shall be directed to the Secretary of Public Welfare.

2. The Department of Public Welfare, Office of Mental Retardation, through its four Regional Office's of Mental Retardation, as the lead agency, receives, investigates and resolves complaints filed against County Mental Health/Mental Retardation Program Offices or Private Providers (see Attachment I).

   The Regional Program Manager, or designee, is responsible for the implementation and management of the complaint system defined herein, within each region. A log that numbers each complaint received shall be maintained by each Regional Office.

3. Initial complaints may be registered through either an oral or written report and directed to the appropriate Regional Office of Mental Retardation.
Regional Office personnel will assist a complainant, whenever necessary, using the complainant's native language and/or mode of communication, with the writing/transmission of statements outlining the details of each complaint. The statement(s) will include sufficient detailed information concerning the alleged violations of regulatory requirements or the provision of services (Individual or System) (see Attachment II).

4. A copy of the complaint will be distributed to the a) Respondent(s) b) Complainant(s) and c) respective County Mental Health/Retardation Program Office and (d) Private Providers (if applicable).

Anonymous Reports will not be accepted.

COMPLAINT SYSTEM PROCEDURES

1. The respective County Mental Health/Retardation Program Office will be a participant in any discussions regarding the complaint, the investigation of the complaint by regional office personnel, the resolution of the complaint and any Plan of Corrective Action.

2. The Department of Public Welfare, Office of Mental Retardation, through the Regional Program Manager, or designee, will within 60 calendar days following the receipt of the initial complaint, complete the following:

   a. A personal interview with the complainant to obtain additional written or oral information and signatures. The complainant will be given the opportunity to submit additional information, either orally or in writing.

   b. A personal interview with an agency director or appropriate agency personnel to discuss the filed complaint and obtain facts and information.

   c. An interview with the County Mental Health/Mental Retardation Administrator his/her designee and/or the Service Coordinator to obtain facts and information.

   d. A review of pertinent written records and documents such as forms, reports, and files, etc.

   e. Contacts with parents, volunteers, advocates, or other parties, who may have important knowledge or information relative to the complaint.
f. On-site inspection/investigation by the Regional Program Manager or designee, if warranted.

g. Contacts with other individuals with specialized expertise pertinent to the complaint.

h. Convene a meeting, as necessary, of the parties involved in the complaint. This meeting will allow for additional discussion among the parties and development of recommendations, a Plan of Action, if appropriate, and agreement concerning the final decision relative to the complaint.

i. Review all relevant information and make an independent determination as to whether the public or private agency is violating a requirement of Part H, Act 212-1990, or other pertinent State or Federal Legislation or Regulation.

j. Issue a written decision to the complainant and the respondent that addresses each allegation in the complaint. This written decision will contain:

1. A ruling/finding on the complaint.
2. The finding includes recommendations, the Plan of Action, or the steps agreed upon by the parties, for corrective implementation of the alleged complaint.
3. The reasons for the Office of Mental Retardation's final decision.
4. Description of all available due process.

k. If the complaint proves to be unfounded through the review process, the formal complaint will be expunged.

l. An extension of the time limit (up to 60 calendar days) may be granted only if exceptional circumstances exist with respect to the review and investigation of a particular complaint. All parties will be informed in writing of the extension, the circumstances for the extension and the new time lines. Extensions should be given rarely, and only upon a factual showing by the party seeking the extension that an "exceptional circumstance" exists.

**CORRECTIVE ACTION PROCESS**

1. If the complaint has been substantiated as a violation and/or non-compliance, corrective action to restore, amend, or improve the circumstances cited in the complaint will be taken within 30 calendar days after the regional ruling.
2. If full implementation of the corrective action plan requires more than 30 calendar days, the County Mental Health/Mental Retardation Program will develop a corrective action plan with time frames for implementation. The corrective action plan must be approved by the Regional Office.

3. The Regional Program Manager or designee will oversee the implementation of the corrective action plan to correct the circumstances in the complaint.
   a. When the corrective action plan is not implemented by the County Mental Health/Mental Retardation Program in accordance with the above procedures, payment to the County Mental Health/Mental Retardation Program will be deferred until the Plan of Action is fully implemented and the violation is corrected.
   b. When the corrective action plan is not implemented by the Private Service Provider in accordance with the above procedures, the Regional Program Manager will advise the County Mental Health/Mental Retardation Program to stop payment for services to that Private Service Agency until the Plan of Action is fully implemented and the violation is corrected.

4. The Regional Program Manager or designee will provide, or ensure the provision of, technical assistance activities, negotiations and corrective actions to achieve compliance.

5. The procedures to ensure effective implementation of corrective actions will be based on each particular complaint case, not general procedures.

APPEAL PROCESS

Any or all of the following entities have the right to request an executive review by the United States Secretary of Education relative to a conclusive finding or resolution.

a. A complainant(s),
b. A public or private agency or organization about which the complaint is directed.

Parent(s) who have filed a complaint that generally affects only a single child or the child's family will be provided information concerning and the opportunity to request mediation or an administrative hearing.
QUARTERLY STATISTICAL REPORTS

Quarterly statistical reports will be compiled by each Regional Office of Mental Retardation and submitted by the 15th day of the month following each quarter to the Deputy Secretary of Mental Retardation.

The report will contain, at a minimum, the following information:

a. The number of Complaints received within each County and information to identify if the complaint was regarding non-compliance of Part H, Act 212-1990, or other pertinent State and Federal Regulations;

b. The Status of the non-compliance Resolution, i.e., Interview, Fact Finding, Plan of Correction, Final Resolution, or Corrected;

c. The Report should include information, in the aggregate or without disclosing information on the identity of the child, including findings and actions taken by the system.

d. The number of unfounded/founded non-compliance issues.

The report will be devoid of any personally identifiable information.

ANNUAL

An Annual statistical report will be compiled by each Regional Office of Mental Retardation and submitted by September 30th of each year to the Deputy Secretary of Mental Retardation. Copies of the regional report shall also be sent to Local Interagency Coordinating Council's within each respective Region.

The Office of Mental Retardation will compile a statewide Annual Statistical Report for submission to the State Interagency Coordinating Council.

These reports will enable the Office of Mental Retardation and the State Interagency Coordinating Council to monitor statewide compliance with Part H, Act 212-1990 and other pertinent State and Federal Legislation, as well as assisting in developing and regulating a Statewide Comprehensive Early Intervention System.

OBSELETE BULLETIN

COMPLAINT REGISTRY FORM

(Prepare in quadruplicate: one copy to complainant; one copy to County MH/MR; one copy to individual/organization being charged with violation; one copy to Office of Mental Retardation Regional Office)

DATE: ____________________

Name and address of individual(s)/Organization/Agency about whom complaint is being filed:

__________________________________________________________________________

__________________________________________________________________________

COMPLAINT/NON-COMPLIANCE: List the facts upon which the alleged complaint is based. (Use additional pages if needed.)

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

__________________________________________________________________________

Name of complainant(s):
Address
and
Telephone #: ____________________________
Signature(s) of complainant(s):

Witness:

__________________________________________________________________________

OFFICE OF MENTAL RETARDATION USE ONLY

Regional Office Location: ____________________________
Date of Complaint: ____________________________
Date of Resolution: ____________________________
Disposition: __________________________________

County MH/MR Program Name: ____________________________
Date forwarded to Central Office: ____________________________
Date referred to U.S. Secretary of Education: ____________________________
Staff Signature: __________________________________
Title: ____________________________________________