§ 2549. Due process. 1. If a parent disagrees with the determination of the evaluator or the local early intervention official with regard to the eligibility for or provision of early intervention services or if such official fails to act within such period of time as may be required by this title or regulations of the commissioner, a parent may make a request in writing for mediation or an impartial hearing to resolve the dispute; provided, however, if a parent elects not to pursue mediation, such election shall not (a) preclude a parent from requesting an impartial hearing or (b) constitute a failure to exhaust administrative remedies.

2. A request for mediation shall be made to the early intervention official for the municipality in which the child resides. Upon such request, the municipality shall notify a community dispute resolution center designated by the commissioner to provide mediation services for such municipality. The community dispute resolution center shall arrange for the mediation to be conducted at a place and time convenient to the parent. Such mediation shall be at no cost to the parent. If all parties agree to the terms of a mediation agreement, a copy of such agreement shall be forwarded by the community dispute resolution center to the participating parties and the service coordinator who shall incorporate the provisions of such agreement into the IFSP no later than five days after receiving a copy of such agreement. If the parties are unable to reach agreement, in full or in part, the mediator shall inform the parent of the availability of the impartial hearing procedures.

3. A parent may file a written request at any time for an impartial hearing with the commissioner or a designee provided, however, that a request for a hearing to contest a determination that a child is not eligible for services under this title must be made within six months of such determination. Upon receipt of such request, the commissioner, or the designee, shall promptly notify the parent, or a person designated by the parent, and other appropriate parties in accordance with the regulations of the commissioner. Any such notice to the parent shall be provided in the native language of such person whenever practicable and, if not, in a manner to ensure notice to such person and shall include but not be limited to:

(a) the procedural safeguards afforded to a parent;

(b) the date, time and location for the impartial hearing, which shall be reasonably convenient for the parent;

(c) the procedures for the appointment of an impartial hearing officer; and

(d) the right of the parent to appeal the decision of the impartial hearing to a court of competent jurisdiction.

4. After receipt of notice from the commissioner of a parent's request for an impartial hearing, the early intervention official shall promptly notify the parent as to whether the municipality intends to be represented by an attorney at such hearing.

5. The impartial hearing shall be conducted by the hearing officer in accordance with the regulations of the commissioner. The hearing shall be held, and a decision rendered, within thirty days after the department receives the request for an impartial hearing except to the extent that the parent consents, in writing, to an extension. The decision shall be in writing and shall state the reasons for the decision and shall be final unless appealed by a party to the proceeding. A copy of the decision reached by the hearing officer shall be mailed to the parent, any public or private agency that was a party to the hearing, the service coordinator, the department and any state early intervention service agency with an interest in the decision. Where ordered by the hearing officer, the service coordinator shall modify the IFSP in accordance with the decision within five days after such decision.

6. During the pendency of any mediation or impartial hearing conducted pursuant to this section, the child and family shall, with parental consent, receive those early intervention services that are not in dispute or that are provided pursuant to the IFSP previously in effect.

7. (a) All orders or determinations made hereunder shall be subject to review as provided for in article seventy-eight of the civil practice law and rules. In any proceeding under article seventy-eight of the civil practice law and rules, the court may grant any relief authorized

by the provisions of section seventy-eight hundred six of such law and rules and also may, in its discretion, remand the proceedings to the department for further consideration upon a finding that any relevant and material evidence is then available which was not previously considered by the department.

(b) A parent who, after completing mediation, substantially prevails in an impartial hearing or a judicial challenge to an order or determination under this title shall be entitled to reimbursement for reasonable attorney's fees incurred in such impartial hearing or judicial challenge provided, however, that the parent shall only be entitled to reimbursement for such fees for prevailing in an impartial hearing if the municipality was represented by an attorney at such impartial hearing.

8. (a) The early intervention official shall maintain the confidentiality of all personally identifiable information regarding the children and families receiving early intervention services. The early intervention official shall ensure that no information regarding the conditions, services, needs, or other individual information regarding a child and family is communicated to any parties other than the service coordinator and service providers currently serving the child and family, without the express written consent of the parent.

(b) Providers of service to eligible children and families shall maintain the confidentiality of all personally identifiable information regarding children and families receiving their services. The provider shall ensure that no information regarding the condition, services, needs, or any other individual information regarding a child and family is released to any party other than the early intervention official without the express written consent of the parent, except as specifically permitted in the coordinated standards and procedures, which shall additionally ensure that the requirements of federal or state law which pertain to the early intervention services of the state early intervention service agencies have been maintained.

(c) This section shall not prohibit disclosure otherwise required by law.