

5123-10-01

Early intervention program - procedural safeguards.**(A) Purpose**

This rule sets forth the procedural safeguards in the early intervention program, including the provisions of parental consent and notice; retention, confidentiality, access to, and amendment of records; and dispute resolution.

(B) Definitions

For the purposes of this rule, the following definitions shall apply:

- (1) "Complainant" means an organization or individual, including an organization or individual from another state. "Complainant" does not include a parent.
- (2) "Consent" means that a parent:
 - (a) Has been informed of the information relevant to the activity for which consent is sought, in the parent's native language;
 - (b) Agrees in writing to the carrying out of the activity for which the parent's consent is sought; and
 - (c) Understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time and that if the parent revokes consent, revocation is not retroactive.
- (3) "Department" means the Ohio department of developmental disabilities.
- (4) "Early intervention program" means Ohio's statewide system that provides coordinated services to parents of infants and toddlers with delays or disabilities in accordance with part C.
- (5) "Early intervention records" means all records regarding a child that are collected, maintained, or used under part C.
- (6) "Early intervention service coordinator" means a person who holds an early intervention service coordinator credential or an early intervention service coordination supervisor credential issued in accordance with rule 5123-10-04 of the Administrative Code and assists and enables an infant or toddler with a developmental delay or disability and the child's family to receive the services and rights, including procedural safeguards, required under part C.
- (7) "Early intervention service provider" means an entity that, or an individual who, provides early intervention services under part C, and may include, where

appropriate, the department and a public agency responsible for providing early intervention services under part C.

- (8) "Early intervention services" means developmental services described in appendix A to rule 5123-10-02 of the Administrative Code, selected in collaboration with a parent of a child birth through age two who is eligible for services under part C, and designed to meet the developmental needs of the child and the needs of the child's family to assist appropriately in the child's development as identified in the individualized family service plan.
- (9) "Individualized family service plan" means the written plan for providing early intervention services to an eligible child and the child's family.
- (10) "Native language" means the language or mode of communication normally used by a child or a parent of the child.
- (11) "Parent" means a biological or adoptive parent of a child, a guardian, a foster parent or person acting in place of a biological or adoptive parent with whom the child lives, or an appointed surrogate parent, consistent with 34 C.F.R. 303.27, as in effect on the effective date of this rule.
- (12) "Part C" means part C of the Individuals with Disabilities Education Act, 20 U.S.C. 1431 through 1445, as in effect on the effective date of this rule, and 34 C.F.R. part 303, as in effect on the effective date of this rule.
- (13) "Participating agency" means any individual, agency, entity, or institution that collects, maintains, or uses personally identifiable information to implement the requirements in part C with respect to a particular child. A participating agency includes the lead agency, early intervention service providers, 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 or public agencies (such as the Ohio department of medicaid) or private entities (such as private insurance companies) that act solely as funding sources for part C services.
- (14) "Personally identifiable information" includes, but is not limited to:
 - (a) A child's name;
 - (b) The name of a child's parent or other family member;
 - (c) The address of a child or the child's family;
 - (d) A personal identifier, such as a child's social security number;

- (e) An indirect identifier, such as a child's date of birth, place of birth, or mother's maiden name;
- (f) Information that, alone or in combination, is linked or linkable to a specific child that would allow a reasonable person, who does not have personal knowledge of the relevant circumstances, to identify the child with reasonable certainty; or
- (g) Information requested by a person who the early intervention service provider reasonably believes knows the identity of the child to whom the early intervention record relates.

(C) Parent's consent and withdrawal of consent

- (1) An early intervention service provider shall ensure that a parent's consent is obtained before:
 - (a) Administering developmental screening procedures that are used to determine whether a child is suspected of having a developmental delay or disability using form EI-01 ("Prior Written Notice and Consent for Developmental Screening," July 2019);
 - (b) Conducting an evaluation or assessment of a child using form EI-02 ("Prior Written Notice and Consent for Developmental Evaluation and Assessment," July 2019);
 - (c) Conducting a family assessment using form EI-03 ("Prior Written Notice and Consent for the Family-Directed Assessment," July 2019);
 - (d) Providing early intervention services to a child or the child's family using form EI-04 ("Individualized Family Service Plan," July 2019);
 - (e) Using private insurance of a child or the child's parent using form EI-05 ("Consent to Use Insurance for Early Intervention Services," July 2019); or
 - (f) Disclosing personally identifiable information to anyone other than authorized representatives, officials, or employees collecting, maintaining, or using the information for purposes of early intervention services using form EI-06 ("Consent for Release of Records and Consent for Release and/or Exchange of Information," July 2019), form EI-07 ("Consents for Transition," July 2019), or form EI-08 ("Consent to Refer Child to the Local Educational Agency and the Ohio Department of Education," July 2019).

- (2) If a parent does not give consent for an evaluation or assessment described in paragraph (C)(1)(b) of this rule, an early intervention service provider shall make reasonable efforts to ensure that the parent:
 - (a) Is fully aware of the nature of the evaluation or assessment of the child and early intervention services that might be available; and
 - (b) Understands that the child will not be able to receive the evaluation, assessment, or early intervention services unless consent is given.
- (3) The parent of a child may:
 - (a) Consent to or withdraw consent for early intervention services at any time; and
 - (b) Withdraw consent for some early intervention services after giving consent, without jeopardizing other early intervention services.
- (4) An early intervention service provider or participating agency shall not use the due process hearing procedures described in paragraph (L) of this rule to challenge a parent's refusal to provide consent.

(D) Prior written notice

- (1) An early intervention service provider shall give prior written notice to a parent at least ten calendar days before proposing or refusing to initiate or change the identification, evaluation, or placement of a child, or providing early intervention services to the child and that child's family. A parent may waive the right to the ten-day prior notice.
- (2) Prior written notice shall:
 - (a) Be sufficient to inform the parent about:
 - (i) The action that is being proposed or refused;
 - (ii) The reasons for taking the action; and
 - (iii) The procedural safeguards set forth in paragraphs (I), (J), (K), and (L) of this rule;
 - (b) Be written in language understandable to the public; and

- (c) Be provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.
 - (d) Be provided on the prescribed form, that is:
 - (i) For developmental screening of a child, form EI-01 ("Prior Written Notice and Consent for Developmental Screening," July 2019);
 - (ii) For child evaluation and/or assessment, form EI-02 ("Prior Written Notice and Consent for Developmental Evaluation and Assessment," July 2019);
 - (iii) For a child determined to be not eligible for early intervention, form EI-09 ("Prior Written Notice of Determination of Ineligibility," July 2019);
 - (iv) When exiting a child in accordance with paragraph (P)(2) of rule 5123-10-02 of the Administrative Code, form EI-10 ("Prior Written Notice of Exiting," July 2019); and
 - (v) For the provision of early intervention services including any proposed placement, form EI-11 ("Prior Written Notice for Proposed Change to Services," July 2019).
 - (3) If the native language or other mode of communication used by a parent is not a written language, an early intervention service provider shall take steps to ensure that:
 - (a) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (b) The parent understands the notice; and
 - (c) There is written documentation that the requirements of paragraph (D) of this rule have been met.
- (E) Retention of early intervention records
- (1) An early intervention service provider:
 - (a) Shall retain a child's early intervention records until the child's ninth birthday;

- (b) Shall inform the parent in writing, upon entry of the child to the early intervention program, when the child's personally identifiable information will be destroyed; and
 - (c) May retain records longer than specified in paragraph (E)(1)(a) of this rule unless the parent requests destruction of personally identifiable information following the mandated retention period.
- (2) The department may retain a permanent record of a child's name, date of birth, parent contact information, names of early intervention service coordinators and early intervention service providers, and exit data (including year and age of the child upon exit, and any programs entered into upon exiting) without time limitation.

(F) Confidentiality of personally identifiable information in early intervention records

- (1) An early intervention service provider shall ensure the confidentiality of personally identifiable information within a child's early intervention records and:
- (a) Appoint an employee to assume the responsibility for maintaining the confidentiality of any personally identifiable information;
 - (b) Successfully complete department-approved training regarding this rule; and
 - (c) Maintain, for public inspection, a current listing of the names and positions of those employees who may have access to personally identifiable information.
- (2) An early intervention service provider shall obtain a parent's consent before disclosing personally identifiable information to:
- (a) Anyone other than authorized representatives, officials, or employees of any participating agency in the early intervention program collecting, maintaining, or using the information under part C; or used for any purpose other than meeting a requirement under part C using form EI-06 ("Consent for Release of Records and Consent for Release and/or Exchange of Information," July 2019); and
 - (b) The local educational agency to identify all children potentially eligible for services under part B of the Individuals with Disabilities Education Act using form EI-07 ("Consents for Transition," July 2019).

(G) Access to early intervention records

(1) An early intervention service provider shall:

- (a) Permit the parent of a child who is referred to or receives early intervention services to inspect and review any early intervention records relating to his or her child that are collected, maintained, or used by the early intervention service provider.
- (b) Comply with a parent's request to inspect and review early intervention records within no more than ten calendar days after the request is made. It shall be presumed that the parent has authority to inspect and review early intervention records relating to his or her child unless the early intervention service provider has been provided documentation that the parent does not have the authority under applicable state laws governing such matters as custody, foster care, guardianship, separation, and divorce.
- (c) Permit a parent to inspect and review early intervention records relating to his or her child unless the early intervention service provider has documentation that the parent does not have the authority.
- (d) Provide a parent, upon request, a list of the types and locations of early intervention records collected, maintained, or used by the early intervention service provider.
- (e) Not charge a fee to search for or to retrieve information or early intervention records requested in accordance with this rule.
- (f) Provide at no cost to a parent, either an electronic or paper copy of the evaluation or assessment of the child, the family-directed assessment, and the individualized family service plan within ten calendar days after each individualized family service plan meeting.
- (g) Have the option to charge a fee for copies of early intervention records that are made for the parent if the fee does not effectively prevent the parent from exercising his or her right to inspect and review those records.
- (h) Keep a record of parties obtaining access to early intervention records collected, maintained, or used under part C (except access by a parent, an authorized representative of a parent, or a participating agency) including:
 - (i) The name of the party;

(ii) The date access was given; and

(iii) The purpose for which the party is authorized to use the early intervention records.

(2) A parent's right to inspect and review early intervention records includes:

(a) The right to a response from the early intervention service provider to reasonable requests for explanations and interpretations of the early intervention records;

(b) The right to request copies of the early intervention records if the parent is unable to otherwise inspect or review the records;

(c) The right to have a representative of the parent inspect and review the early intervention services records; and

(d) The right to inspect and review only the information relating to the parent's child.

(H) Amendments to early intervention records

(1) A parent, who believes that information in the early intervention records of his or her child is inaccurate, misleading, or violates the privacy or other rights of the child or parent, may request verbally or in writing that the early intervention service provider that maintains the early intervention records amend the information.

(2) The early intervention service provider shall decide whether to amend the information in accordance with the request within a reasonable period of time of receipt of the request.

(3) If the early intervention service provider refuses to amend the early intervention records, the early intervention service provider must inform the parent of the refusal and advise the parent of the parent's right to a due process hearing pursuant to the procedures set forth in paragraph (L) of this rule.

(a) The early intervention service provider shall, upon request, provide the parent with the opportunity for a due process hearing in accordance with paragraph (L) of this rule to challenge information in the child's early intervention records to ensure that it is not inaccurate, misleading, or in violation of the privacy and other rights of the child or parent.

- (b) If, as a result of the due process hearing, it is determined that the information is inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the early intervention service provider shall amend the information accordingly and so inform the parent in writing.
- (c) If, as a result of the due process hearing, it is determined that the information is not inaccurate, misleading, or in violation of the privacy or other rights of the child or parent, the early intervention service provider shall inform the parent of the parent's right to place in the early intervention records of his or her child, a statement commenting on the information or setting forth any reasons for disagreeing with the decision. Any explanation placed in the early intervention records of the child in accordance with this paragraph shall:
 - (i) Be maintained by the early intervention service provider as part of the early intervention records of the child as long as the early intervention records or contested portion is maintained; and
 - (ii) Be disclosed as part of the early intervention records of the child if the early intervention service provider discloses the early intervention records of the child to any party.

(I) Dispute resolution

- (1) Disputes regarding an alleged violation of part C may be resolved informally at the local level.
- (2) When resolution at the local level is not achieved or preferred, a complainant or parent may file a complaint with the department.
- (3) A complaint filed with the department shall:
 - (a) Be in writing;
 - (b) Be filed within one year after the alleged violation that is the subject of the complaint; and
 - (c) Include:
 - (i) A statement that an early intervention service provider violated a requirement of part C;
 - (ii) The facts on which the statement is based;

- (iii) The signature of and contact information for the complainant or the parent; and
- (iv) If alleging violations with respect to a specific child:
 - (a) The name and address of the residence of the child;
 - (b) The name of the early intervention service provider serving the child;
 - (c) A description of the nature of the problem, including facts relating to the problem; and
 - (d) A proposed resolution of the problem to the extent known and available to the complainant or parent at the time the complaint is filed.
- (4) The complainant or parent shall forward a copy of the complaint to the early intervention service provider serving the child at the same time the complaint is filed with the department.
- (5) During the pendency of any proceeding involving a complaint, unless the department and the parent of a child otherwise agree, the child shall continue to receive the early intervention services that were agreed to in the individualized family service plan.
- (6) If the complaint involves an application for initial early intervention services, the child shall receive those services that are not in dispute.
- (7) After a parent has filed a complaint with the department, the parent may request that the department investigate the complaint pursuant to paragraph (J) of this rule, may request to mediate the complaint pursuant to paragraph (K) of this rule, or may choose to proceed with a due process hearing pursuant to paragraph (L) of this rule.
- (8) After a complainant has filed a complaint with the department, the department shall investigate the complaint pursuant to paragraph (J) of this rule.

(J) Investigation of a complaint

- (1) Within sixty calendar days after the complaint is filed and the complainant or parent has requested that the department investigate the complaint, the department shall:

- (a) Carry out an independent on-site investigation, if the department determines that an on-site investigation is necessary;
 - (b) Give the complainant or parent the opportunity to submit additional information, either orally or in writing, about the allegations in the complaint;
 - (c) Respond or provide the early intervention service provider with an opportunity to respond to the complaint, including:
 - (i) At the department's discretion, a proposal to resolve the complaint; and
 - (ii) An opportunity for the parent who filed a complaint and the department or the early intervention service provider, to voluntarily engage in mediation, consistent with paragraph (K) of this rule;
 - (d) Review all relevant information and make an independent determination as to whether the department or the early intervention service provider is violating a requirement under part C; and
 - (e) Issue a final written decision to the complainant or parent that addresses each allegation in the complaint and that contains findings of fact, conclusions, the reasons for the department's final written decision, and the procedures, if needed, for the effective implementation of the department's final written decision, including:
 - (i) Technical assistance activities;
 - (ii) Negotiations; and
 - (iii) Corrective actions to achieve compliance.
- (2) In resolving a complaint in which the department has found a failure to provide appropriate early intervention services, the department shall address:
- (a) The failure to provide appropriate early intervention services, including corrective actions appropriate to address the needs of the child whose services are the subject of the complaint and the child's family; and
 - (b) Appropriate future provision of early intervention services for all eligible children and their families.
- (3) If a parent disagrees with the department's final written decision issued pursuant to paragraph (J)(1)(e) of this rule, the parent may request to mediate the dispute

pursuant to paragraph (K) of this rule or the parent may choose to proceed with the due process hearing procedures pursuant to paragraph (L) of this rule.

- (4) The department may grant an extension of the time line specified in paragraph (J)(1) of this rule only if:
 - (a) Exceptional circumstances exist with respect to a particular complaint; or
 - (b) The parent and the department or early intervention service provider involved agree to extend the time to engage in mediation pursuant to paragraph (K) of this rule.
- (5) If a written complaint is received that is also the subject of a due process hearing under paragraph (L) of this rule, or contains multiple issues of which one or more are part of the due process hearing, the department shall set aside any part of the complaint that is being addressed in that hearing until the conclusion of the hearing. Any issue in the complaint that is not a part of the due process hearing shall be resolved in accordance with the time lines and procedures described in paragraphs (J)(1) and (J)(4) of this rule.
- (6) If an issue raised in a complaint has previously been decided in a due process hearing involving the same parties:
 - (a) The due process hearing decision is binding on that issue; and
 - (b) The department shall inform the parent to that effect.
- (7) The department shall resolve a complaint alleging the failure of the department or the early intervention service provider to implement a due process hearing decision.

(K) Mediation process

- (1) A parent may file a complaint with the department and may then choose to resolve the dispute through the mediation process at any time.
- (2) The mediation process:
 - (a) Is voluntary on the part of the parties;
 - (b) Shall not be used to deny or delay a parent's right to a due process hearing, or to deny any other rights afforded under part C; and

- (c) Shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

(3) The department shall:

- (a) Select mediators on an impartial basis;
- (b) Bear the cost of the mediation process;
- (c) Schedule each mediation session in a timely manner; and
- (d) Hold each mediation session in a location that is convenient to the parties to the dispute.

(4) A person who serves as a mediator shall not:

- (a) Be an employee of the department;
- (b) Be an early intervention service provider that is involved in the provision of early intervention services or other services to the child; or
- (c) Have a personal or professional interest that conflicts with the person's objectivity.

(5) If the parties resolve a dispute through the mediation process, the parties shall execute a legally binding agreement that sets forth the resolution and:

- (a) States that all discussions that occurred during the mediation process will remain confidential and may not be used as evidence in any subsequent due process hearing or civil proceeding; and
- (b) Is signed by both the parent and a representative of the department.

(6) If the parties do not resolve the dispute through the mediation process, the parties may request the department to conduct an investigation pursuant to paragraph (J) of this rule or the parent may choose to proceed with the due process hearing procedures pursuant to paragraph (L) of this rule.

(L) Due process hearing procedures

- (1) A parent filing a complaint with the department alleging that an early intervention service provider violated a requirement of part C related to the identification, evaluation, or placement of his or her child, or the provision of early intervention services to the child and his or her family under part C, may choose to resolve the dispute through the due process hearing procedures.

- (2) The department shall appoint an impartial due process hearing officer to implement the complaint resolution process. The hearing officer shall:
 - (a) Have knowledge about the provisions of part C and the needs of, and early intervention services available to, children and their families;
 - (b) Listen to the presentation of relevant viewpoints about the complaint;
 - (c) Examine all information relevant to the issues;
 - (d) Seek to reach a timely resolution of the complaint;
 - (e) Provide a written decision within thirty calendar days after the receipt of the parent's complaint; and
 - (f) Grant specific extensions of the time lines set forth in paragraphs (L)(2)(e) and (L)(3)(a) of this rule at the request of either party.
- (3) A parent involved in a due process hearing has the right to:
 - (a) A completed due process hearing and a written decision mailed to each of the parties within thirty calendar days after the receipt of the parent's complaint;
 - (b) A due process hearing that is conducted at a time and place that is convenient to the parent;
 - (c) Be accompanied and advised by counsel and by persons with special knowledge or training with respect to early intervention services, the cost of which shall be borne by the parent;
 - (d) Present evidence and confront, cross-examine, and compel the attendance of witnesses through subpoenas issued by the department;
 - (e) Prohibit the introduction of any evidence at the due process hearing that has not been disclosed to the parent at least five calendar days before the hearing;
 - (f) Obtain a written or electronic transcription of the due process hearing at no cost; and
 - (g) Receive a written copy of the findings of fact and decision at no cost.
- (4) Any party to the due process hearing that disagrees with the findings and decision issued pursuant to the due process hearing procedures:

- (a) May no longer attempt to resolve the dispute through an investigation pursuant to paragraph (J) of this rule or mediation pursuant to paragraph (K) of this rule; and
- (b) Has the right to bring a civil action in state or federal court under section 639(a)(1) of the Individuals with Disabilities Education Act, as in effect on the effective date of this rule.

(M) Authority of director to waive provisions of this rule

During the COVID-19 state of emergency declared by the governor, the director of the department may waive requirements set forth in this rule to complete specified early intervention forms if the required information, notice, or consent described in a form is otherwise provided or secured and documented in writing.

Effective: 6/11/2020

CERTIFIED ELECTRONICALLY

Certification

06/11/2020

Date

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