

## Rule Summary and Fiscal Analysis

### Part A - General Questions

**Rule Number:** 5123-10-01

**Rule Type:** Amendment

**Rule Title/Tagline:** Early intervention program - procedural safeguards.

**Agency Name:** Department of Developmental Disabilities

**Division:**

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#### I. Rule Summary

1. Is this a five year rule review? Yes
  - A. What is the rule's five year review date? 4/1/2024
2. Is this rule the result of recent legislation? No
3. What statute is this rule being promulgated under? 119.03
4. What statute(s) grant rule writing authority? 5123.04, 5123.0421
5. What statute(s) does the rule implement or amplify? 5123.04, 5123.0421
6. Does the rule implement a federal law or rule in a manner that is more stringent or burdensome than the federal law or regulation requires? No
  - A. If so, what is the citation to the federal law or rule? Not Applicable
7. What are the reasons for proposing the rule?

The rule is being amended based on the five-year review.
8. Summarize the rule's content, and if this is an amended rule, also summarize the rule's changes.

The 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. Based on a comprehensive review, the rule is being amended to:

- Clarify that "Early Intervention records" includes records in any format.
- Distinguish between assessment of a child and assessment of the child's family.
- Eliminate paragraph (M) which authorized the Director of the Department to waive provisions of the rule during the COVID-19 state of emergency.
- Update references to forms.
- Eliminate regulatory restrictions.

**9. Does the rule incorporate material by reference? Yes**

**10. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.75, please explain the basis for the exemption and how an individual can find the referenced material.**

The incorporated references are to the Individuals with Disabilities Education Act, the Code of Federal Regulations, the United States Code, the Administrative Code, and various Early Intervention program forms. Pursuant to Section 121.75 of the Revised Code, the requirements in Sections 121.71 to 121.74 do not apply. The Individuals with Disabilities Education Act, the Code of Federal Regulations, the United States Code are available at libraries and on the internet. The Administrative Code is available at libraries and on the internet at <https://codes.ohio.gov>. The Department's administrative rules are also available at <https://dodd.ohio.gov/forms-and-rules/rules-in-effect/administrative-rules-list>. The Early Intervention program forms are available at <https://dodd.ohio.gov/forms-and-rules/rules-under-development/Public+Hearings+for+Proposed+Rules>

**11. If revising or re-filing the rule, please indicate the changes made in the revised or re-filed version of the rule.**

The rule is being refiled to extend JCARR jurisdiction. No changes were made to the rule.

## **II. Fiscal Analysis**

**12. Please estimate the increase / decrease in the agency's revenues or expenditures in the current biennium due to this rule.**

This will have no impact on revenues or expenditures.

\$ 0

Not applicable.

**13. What are the estimated costs of compliance for all persons and/or organizations directly affected by the rule?**

The rule impacts providers of Early Intervention services who must:

- Obtain a parent's consent prior to providing services to a child, birth through age two, or the child's family.
- Provide the parent with prior written notice for a variety of reasons.
- Maintain and ensure confidentiality of a child's records.
- Cooperate, participate, and provide information in complaint resolution, mediation, and due process procedures.

The costs associated with these activities (i.e., staff time) will vary based on the number and nature of children/families served by the provider and are unknown by the Department.

**14. Does the rule increase local government costs? (If yes, you must complete an RSFA Part B). No**

**15. Does the rule regulate environmental protection? (If yes, you must complete an RSFA Part C). No**

**16. If the rule imposes a regulation fee, explain how the fee directly relates to your agency's cost in regulating the individual or business.**

Not applicable.

**III. Common Sense Initiative (CSI) Questions**

**17. Was this rule filed with the Common Sense Initiative Office? Yes**

**18. Does this rule have an adverse impact on business? Yes**

**A. Does this rule require a license, permit, or any other prior authorization to engage in or operate a line of business? Yes**

The rule requires providers of Early Intervention services to obtain a parent's consent prior to providing services to a child, birth through age two, or the child's family.

**B. Does this rule impose a criminal penalty, a civil penalty, or another sanction, or create a cause of action, for failure to comply with its terms? No**

**C. Does this rule require specific expenditures or the report of information as a condition of compliance? Yes**

The rule requires providers of Early Intervention services to:

- Provide a parent with prior written notice for a variety of reasons;
- Maintain and ensure confidentiality of a child's Early Intervention records; and
- Cooperate, participate, and provide information in complaint resolution, mediation, and due process procedures.

**D. Is it likely that the rule will directly reduce the revenue or increase the expenses of the lines of business of which it will apply or applies? No**

**IV. Regulatory Restriction Requirements under S.B. 9. Note: This section only applies to agencies described in R.C. 121.95(A).**

**19. Are you adding a new or removing an existing regulatory restriction as defined in R.C. 121.95? Yes**

**A. How many new regulatory restrictions do you propose adding to this rule? 0**

**B. How many existing regulatory restrictions do you propose removing from this rule? 38**

5123-10-01 (B): For the purposes of this rule, the following definitions shall apply:

5123-10-01 (C)(1): An early intervention service provider shall ensure that a parent's consent is obtained before:

5123-10-01 (C)(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:

5123-10-01 (C)(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.

5123-10-01 (D)(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.

5123-10-01 (D)(2): Prior written notice shall:

5123-10-01 (D)(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:

5123-10-01 (E)(1)(a): Shall retain a child's early intervention records until the child's ninth birthday;

5123-10-01 (E)(1)(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

5123-10-01 (F)(1): An early intervention service provider shall ensure the confidentiality of personally identifiable information within a child's early intervention records and:

5123-10-01 (F)(2): An early intervention service provider shall obtain a parent's consent before disclosing personally identifiable information to:

5123-10-01 (G)(1): An early intervention service provider shall:

5123-10-01 (G)(1)(b): 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.

5123-10-01 (H)(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.

5123-10-01 (H)(3)(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.

5123-10-01 (H)(3)(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.

5123-10-01 (H)(3)(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.

5123-10-01 (H)(3)(c): Any explanation placed in the early intervention records of the child in accordance with this paragraph shall:

5123-10-01 (I)(3): A complaint filed with the department shall:

5123-10-01 (I)(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.

5123-10-01 (I)(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.

5123-10-01 (I)(6): If the complaint involves an application for initial early intervention services, the child shall receive those services that are not in dispute.

5123-10-01 (I)(8): After a complainant has filed a complaint with the department, the department shall investigate the complaint pursuant to paragraph (J) of this rule.

5123-10-01 (J)(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:

5123-10-01 (J)(2): In resolving a complaint in which the department has found a failure to provide appropriate early intervention services, the department shall address:

5123-10-01 (J)(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.

5123-10-01 (J)(5): 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.

5123-10-01 (J)(6)(b): The department shall inform the parent to that effect.

5123-10-01 (J)(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.

5123-10-01 (K)(2)(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

5123-10-01 (K)(2)(c): Shall be conducted by a qualified and impartial mediator who is trained in effective mediation techniques.

5123-10-01 (K)(3): The department shall:

5123-10-01 (K)(4): A person who serves as a mediator shall not:

5123-10-01 (K)(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:

5123-10-01 (K)(5)(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

5123-10-01 (L)(2): The department shall appoint an impartial due process hearing officer to implement the complaint resolution process.

5123-10-01 (L)(2): The hearing officer shall:

5123-10-01 (L)(3)(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;

- C. If you are not removing existing regulatory restrictions from this rule, please list the rule number(s) from which you are removing restrictions.**
- D. Please justify the adoption of the new regulatory restriction(s).**

Not Applicable