

## Rule Summary and Fiscal Analysis

### Part A - General Questions

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

**Rule Type:** New

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

**Agency Name:** Department of Developmental Disabilities

**Division:**

**Address:** 30 East Broad Street, 12th Floor Columbus OH 43215-3414

**Contact:** Becky Phillips

**Email:** becky.phillips@dodd.ohio.gov **Phone:** (614) 644-7393

#### **I. Rule Summary**

1. Is this a five year rule review? No
  - A. What is the rule's five year review date?
2. Is this rule the result of recent legislation? Yes
  - A. If so, what is the bill number, General Assembly and Sponsor? HB 483 - 131  
- Representative Amstutz
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. What are the reasons for proposing the rule?

House Bill 483 of the 131st General Assembly transferred responsibility for implementing the Early Intervention program from the Ohio Department of Health to the Ohio Department of Developmental Disabilities and charged the Ohio Department of Developmental Disabilities with adopting rules necessary to implement the program.

- 7. 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.

- 8. Does the rule incorporate material by reference? Yes**

- 9. If the rule incorporates material by reference and the agency claims the material is exempt pursuant to R.C. 121.71 to 121.76, 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, and the United States Code, which are available to the public at libraries and on the internet.
- Various Early Intervention program forms, which are available at the Ohio Early Intervention website (<https://ohioearlyintervention.org>).

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

PARAGRAPH (B)(2)(b) REVISED FROM:

Agrees in writing to the carrying out of the activity for which the parent's consent is sought, and the consent form describes the activity and lists the early intervention records (if any) that will be released and to whom they will be released; and

TO:

Agrees in writing to the carrying out of the activity for which the parent's consent is sought; and

PARAGRAPH (B)(6) REVISED FROM:

"Early intervention service coordinator" means a person who holds an early intervention service coordinator credential issued in accordance with rule 5123-10-04 of the Administrative Code and assists and enables an infant or toddler with a disability and the child's family to receive the services and rights, including procedural safeguards, required under part C.

TO:

"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.

PARAGRAPH (B)(7) REVISED FROM:

"Early intervention service provider" means an entity or an individual that 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.

TO:

"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.

BEGINNING IN PARAGRAPH (C) AND THROUGHOUT RULE, DATES ASSOCIATED WITH REFERENCED FORMS REVISED FROM:

October 2018

TO:

July 2019

PARAGRAPH (C)(1)(a) REVISED FROM:

Administering screening procedures that are used to determine whether a child is suspected of having a disability using form EI-01 ("Prior Written Notice and Consent for Developmental Screening," July 2019);

TO:

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);

PARAGRAPH (C)(4) REVISED FROM:

An early intervention service provider shall not use the due process hearing procedures described in paragraph (L) of this rule to challenge a parent's refusal to provide consent.

TO:

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.

PARAGRAPH (D)(2)(d) REVISED FROM:

Be provided on the prescribed form:

TO:

Be provided on the prescribed form, that is:

PARAGRAPH (D)(2)(d)(i) REVISED FROM:

For developmental screening of a child, form EI-01 ("Prior Written Notice and Consent for Developmental Screening," October 2018) shall be used;

TO:

For developmental screening of a child, form EI-01 ("Prior Written Notice and Consent for Developmental Screening," July 2019);

PARAGRAPH (D)(2)(d)(ii) REVISED FROM:

For child evaluation and/or assessment, form EI-02 ("Prior Written Notice and Consent for Developmental Evaluation and Assessment," October 2018) shall be used;

TO:

For child evaluation and/or assessment, form EI-02 ("Prior Written Notice and Consent for Developmental Evaluation and Assessment," July 2019);

PARAGRAPH (D)(2)(d)(iii) REVISED FROM:

For a child determined to be not eligible for early intervention, form EI-09 (Prior Written Notice of Determination of Ineligibility," October 2018) shall be used;

TO:

For a child determined to be not eligible for early intervention, form EI-09 ("Prior Written Notice of Determination of Ineligibility," July 2019);

PARAGRAPH (D)(2)(d)(iv) REVISED FROM:

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," October 2018) shall be used; and

TO:

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

PARAGRAPH (D)(2)(d)(v) REVISED FROM:

For the provision of early intervention services including any proposed placement, form EI-11 ("Prior Written Notice of Proposed Change to Services," October 2018) shall be used.

TO:

For the provision of early intervention services including any proposed placement, form EI-11 ("Prior Written Notice for Proposed Change to Services," July 2019).

PARAGRAPH (D)(3) REVISED FROM:

If the native language or other mode of communication used by the parent is not written language, an early intervention service provider shall take steps to ensure that:

TO:

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:

**PARAGRAPH (G)(1)(d) REVISED FROM:**

Provide a parent, upon request, a list of the types and locations of early intervention records collected, maintained, or used by provider.

**TO:**

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.

**PARAGRAPH (G)(1)(h) REVISED FROM:**

Keep a record of parties obtaining access to early intervention records collected, maintained, or used under part C (except access by a parent and authorized representatives and employees of the early intervention service provider) including:

**TO:**

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:

**PARAGRAPH (H)(3)(c) REVISED FROM:**

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 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 of the provider. Any explanation placed in the early intervention records of the child under this section shall:

**TO:**

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:

**PARAGRAPH (I)(3)(c)(iii) REVISED FROM:**

The signature and contact information for the complainant or the parent; and

**TO:**

The signature of and contact information for the complainant or the parent; and

**PARAGRAPH (J)(1)(e) REVISED FROM:**

Issue a final written decision to the complainant or parent that addresses each allegation in the complaint 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:

TO:

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:

PARAGRAPH (L)(2) REVISED FROM:

The department shall appoint an impartial due process hearing officer to implement the complaint resolution process. The person shall:

TO:

The department shall appoint an impartial due process hearing officer to implement the complaint resolution process. The hearing officer shall:

PARAGRAPH (L)(3) REVISED FROM:

The parent involved in a due process hearing has the right to:

TO:

A parent involved in a due process hearing has the right to:

PARAGRAPH (L)(3)(c) REVISED FROM:

Be accompanied and advised by counsel and by persons with special knowledge or training with respect to early intervention services;

TO:

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;

## **II. Fiscal Analysis**

- 11. As a result of this proposed rule, please estimate the increase / decrease in revenues or expenditures affecting this agency, or the state generally, in the current biennium or future years. If the proposed rule is likely to have a different fiscal effect in future years, please describe the expected difference and operation.**

This will have no impact on revenues or expenditures.

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The Department has already assumed responsibility for administering the Early Intervention program. The rule is not expected to increase or decrease revenues or expenditures for the Department.

**12. 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 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 Early Intervention records; and
- 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.

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

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

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

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

**16. 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 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 the 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.