

To: All Early Intervention contract managers and FCFC coordinators
From: Nathan DeDino
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Subject: Early Intervention Program Updates, #2017

MESSAGE FROM THE PART C COORDINATOR

During the past two weeks, the US Department of Education’s Office of Special Education Programs (OSEP) has issued guidance related to Part C Early Intervention requirements during the COVID-19 pandemic. This guidance clarifies how states and local EI programs must implement the Individuals with Disabilities Education Act (IDEA) under the current circumstances and provides some limited flexibility. We are pleased to share with you that the EI guidance DODD issued over the past several months related to the pandemic is very consistent with OSEP’s guidance and will need only slight modifications and clarifications. We highlight those issues below. Changes are limited to only two areas: written consent and non-compliance on timelines related to the pandemic. As always, please do not hesitate to contact your EI program consultant if you have any questions. If you are interested in reading OSEP’s guidance, you can access it [here](#).

I always invite your feedback. Do not hesitate to contact me at nathan.dedino@dodd.ohio.gov. I look forward to hearing from you.

PROGRAM UPDATES

Written Consent

OSEP has clarified that consent for any EI activity must be in writing. The consent does not need to be obtained on a physical piece of paper, and an electronic signature is acceptable if it—

- is signed and dated,
- identifies and authenticates a particular person as the source of the electronic consent,
- indicates such person’s approval of the information contained in the electronic consent, and
- is accompanied by a statement that the person understands and agrees.

Many local EI programs in Ohio have found creative ways to obtain copies of a parent’s written consent (e.g., mailing copies of the forms to the parent and having the parent text a photo of the signed form to the EI service coordinator). If the local EI program has found a way to obtain a completed EI consent form (either as a hardcopy or electronically) from the parent in some format, this will continue to be acceptable.

Effective immediately, in cases where the local EI program is unable to obtain the completed consent form, the program must still find a way to obtain the consent *in writing*. An acceptable text message or e-mail from the parent might take this form: “My service coordinator has reviewed

the consent form for [insert the activity/ies] with me. I understand the information, and I consent to having the [insert the activity/ies] completed for [insert child name]. Parent name and date.” Ensure the explanation and activities related to obtaining the consent are well-documented in case notes.

Noncompliance with the 45-Day Timeline

OSEP recognized that components of the 45-Day timeline (evaluation, assessment, or development of the Individualized Family Service Plan (IFSP)) may be impossible for local EI programs to complete when an individual situation requires the activity to be completed in-person and it is not “feasible or advisable” to complete an in-person activity due to the pandemic. In these limited cases, OSEP will classify this noncompliance as a “family reason” for noncompliance even if the family may have been willing to have an in-person meeting, although it would have been inadvisable due to current spread of the COVID-19 virus, state or local public health orders, etc.

It is important to note that OSEP explicitly states that the COVID-19 pandemic cannot be used as a reason for noncompliance with the 45-Day timeline for *all* children in the state. Instead, the determination “must be made on a case-by-case basis.” Further, local EI programs maintain a responsibility to “complete the delayed evaluation, assessment, or initial IFSP as soon as possible after the exceptional circumstances no longer exist.” For example, if a family’s evaluation was delayed because the family did not have internet access to complete a virtual evaluation and the family’s service coordinator helped the family obtain internet access, the evaluation would need to be completed as soon as possible after the family had access to the internet. In all cases, the circumstances related to the delays and the steps the local EI program took to support the family must be well documented.

OSEP’s guidance is consistent with past DODD guidance encouraging the use of technology to provide early intervention and advising local EI programs to prioritize health and safety over EI timelines. In March, DODD introduced a special COVID-19 noncompliance reason (NCR) for local EI programs to use when the family might technically have been available to complete an EI activity in-person, but the local EI program was not able to complete the activity because completing the activity in-person was not consistent with health and safety considerations. Please continue to use the COVID-19 NCR reason in these specific circumstances, but these NCR reasons will not be considered system reasons that count against the local program or state. Instead, DODD will treat these similarly to our treatment of NCRs related to extreme weather or emergency closures. Noncompliance due to a family reason (parent cancels, reschedules, does not respond, etc.) should continue to be documented as a family reason NCR.

Access to EI Records

OSEP reminds states and local EI programs that they must work to accommodate a parent who wishes to inspect their child’s EI record, even if this cannot occur in person due to health and safety reasons. OSEP suggests providing a copy of the child record via email, a secure on-line portal, or postal mail until the local EI program is open and able to allow an in-person inspection.