



## **Frequently Asked Questions: Identifying the Parent**

**Q1: When a judicial order gives legal custody to JFS, are we no longer to try to get birth parent consent?**

A: If the local JFS has been awarded custody without limitation, you would **not** contact the biological parent for consent.

**Q2: What if one biological parent consents but the other disagrees?**

A: When a court has not been involved (e.g., custody in a divorce case), EI needs to seek the consent of one biological/adoptive parent. Both parents do not need to be in agreement.

**Q3: What if biological parent tells you they will only provide consent because they feel they have to as part of their reunification plan with children's services? Is this really consent?**

A: Every parent's situation is unique. As someone obtaining consent to the family, your obligation is to fully inform the parent of what he or she is consenting to and ensure that the parent has the information needed to make an informed decision.

**Q4: For an adoptive parent, does the SC need to obtain a copy of paperwork showing that they've been adopted, or does the SC just go by trust of that person/parent?**

A: Although every situation is unique, it is not a requirement for the adoptive parent to present paperwork documenting the adoption.

**Q5: Does temporary custody meet the definition of legal custody, or are we looking for the specific wording of legal custody?**

A: "Temporary custody" is "legal custody" that is temporary in nature. Thus, there is no difference as it would relate to who could sign consents in EI.

**Q6: Is there a definition for "without limitation" when referring to legal custody? What does this mean if parents have supervised visits on the legal custody form?**

A: "Without limitation" simply means that the judicial order has not in some way limited the legal custody. You would need to review the specific wording of the judicial order to determine if there was a limitation.

**Q7: If we have a parent that would like services for their child in foster care or with a relative, but rights are severed, how do we proceed if the foster family or relative is not wanting those services, but the parent does?**

A: The person/entity with legal custody without limitation will make the decision about whether to consent to EI services.

**Q8: What if bio-parent provides consent but foster parent doesn't (but bio-parent no longer has visitation even though her rights have not been severed)?**

A: The person/entity with legal custody without limitation will make the decision about whether to consent to EI services. You would not contact the biological/adoptive parent for consent in these situations.

**Q9: If a child lives with biological parent, however, the Grandma is the one that watches him and keeps him, and Mom wants Grandma to make the decisions because she works all the time, can Grandma sign the consents and IFSP?**

A: Please contact your EI program consultant. It would be possible to allow the grandmother to sign, but we would need something in writing from the parent documenting this decision.

**Q10: If someone has legal custody of a child we do not need to seek out bio parent?**

A: If a child is not living with the biological/adoptive parent and there is a custody order, you would seek consent from whoever has custody without limitation.

**Q11: If the Judicial order states that an agency has custody of the child do we still need consent from bio parent?**

A: If a child is not living with the biological/adoptive parent and there is a custody order, you would seek consent from whoever has custody without limitation.

**Q12: If a child is referred from JFS child services, if we have a copy of the order giving temporary custody to JFS, do we need to attempt to reach the bio parent?**

A: If children services has custody without limitation, you would not need to attempt to reach the biological/adoptive parent.

**Q13: If we cannot obtain the judicial order within those first 45 days, is documenting this acceptable as an NCR?**

A: It may be. Documentation of multiple timely attempts will be imperative. Please reach out to your EI program consultant if you are having trouble obtaining necessary information about the judicial order.

**Q14: Can you give us guidance on how to explain these changes to current biological families who initially signed our consent and are coming up on a periodic/annual IFSP? We have some bios that will no longer have the right to sign consent going forward and this may be confusing to them.**

A: Each situation will be unique. Please contact your EI program consultant to discuss specific questions.

**Q15: What do we do about the cases that are already in process where the biological parents have signed for consent and we have informed them that they have parental rights to determine decisions in EI?**

A: Each situation will be unique. Please contact your EI program consultant to discuss specific questions.

**Q16: Do we need a parent consent signed to release or share information to get a judicial order from the local court?**

A: No. You do not need parent consent or a Release of Information to obtain a court order.

**Q17: Can you visit the family where the child is before you get the judicial order to find out if they have a judicial order? Or is it okay to do if you aren't doing any screenings, assessment, etc. just getting information?**

A: Yes, you can visit the family where the child is residing before obtaining a copy of the judicial order.

**Q18: What if you know CPS has custody, foster parents were told by the caseworker that the parents do NOT maintain their rights. You have contacted the caseworker more than 2 times to find out who needs to sign for EI services, but the caseworker will not respond. How long do we wait and are we able to assign the foster parent if the caseworker does not respond? Keep in mind that we, nor the foster parents, have no idea of who the biological parents are. This is an out of county placement over 2.5 hours from the CPS agency.**

A: Foster parents meet the definition of parent in this situation and could sign the consent if willing. If they are unwilling and you are having trouble contacting the caseworker, please contact your EI program consultant.

**Q19: At least in my county, the initial judicial order just says temporary or emergency order of custody to \_\_\_\_ agency or person. It's a one-page piece of paper with nothing else on it. It can take a long time to get a more permanent order of custody and the full court journal entry spelling out who has what rights. Does this initial paperwork still allow that person or agency to sign consents or would we try to contact the parent first?**

A: A person with temporary custody without limitation is able to sign consents in EI for a child.

**Q20: If a caregiver (kinship) or agency (CPS) was granted Temporary custody, and the kin provider and/or foster parent has a letter stating they have the right to seek education and medical care for the child, would that fall under scenario 2 or scenario 3?**

A: If a person or agency has temporary custody, a letter about rights to make education or medical decisions for the child is unnecessary. Temporary custody without limitation gives that person/agency the right to make education and medical decisions for the child. (This is Scenario 2).

**Q21: Just to confirm, for a child in foster care, we no longer need to attempt contacts with the bio parent for consent? Children services will determine if caseworker or foster parent will sign? We only attempt contact with bio parent for a person acting in place of parent with no legal custody document?**

A: Yes, that is correct.

**Q22: In the case when a biological parent or legal guardian is contacted and never got back to you after two attempts, how would you document that if the 14 days fell after the 45-day deadline?**

A: The initial contact attempts to the biological/adoptive parent should have been made more than 14 days in advance of the 45-day timeline.

**Q23: Just to clarify, in the case of Children's services having temporary custody, the agency could opt for the caseworker to be the one to sign for EI services?**

A: Yes, the agency could opt for the caseworker to sign consents.

**Q24: If we have a child that is currently being served under the previous guidelines (I have biological parent signing but there is a judicial order giving Licking County Children Services temporary custody.) Do I need to change this on annual?**

A: You would make this change the next time you needed to obtain a parent's consent for some activity or inform the parent of something (e.g., prior written notice).

**Q25: Do we just *look* at the judicial order, or do we need a copy of it?**

A: You are not required to make a copy of the judicial order, but it would be best practice, and wisest, to keep a copy in the child's record.

**Q26: If the judicial order only specifies the ability to make health decisions can the person identified sign consents for EI? (Educational decision is not specified in the order.)**

A: It would depend on how the order is written. Please contact your EI program consultant.

**Q27: It is often to get judicial orders in a timely manner. What steps do we take then in what timeframe?**

A: If a child is not living with the biological/adoptive parent and children's services is involved, you should begin attempts to obtain the judicial order as soon as possible after the EI referral has been made.

**Q28: Regarding Release of Information: if bio parent is not involved, child resides in foster care who should/can sign ROI to share information with Children's Services?**

A: If children's services has legal custody without limitation, you should be in contact with children's services to determine who is authorized to sign the ROI.

**Q29: Bio parents do not live together--child lives in foster care. If we attempt to contact one parent and get no response do we then attempt to contact the other? What if bio parents give conflicting responses?**

A: If a child is in foster care, the biological/adoptive parent will not have legal custody. The person/entity with legal custody should be contacted for any necessary consents.

**Q30: Judicial records do not typically spell out if a parent can have access to records. Are we to assume that if the judicial order states that someone other than biological parent can sign consent that biological parent cannot view? The**

**definition of parent then becomes whoever is identified in judicial order if the child is not residing with biological parents?**

A: If a judicial order has identified a person as having legal custody without limitation, that person is the parent for EI purposes. In this example, the person with legal custody would need to sign a ROI for someone else (including the biological/adoptive parent) to access the child's records.

**Q31: Can foster parents sign as the parent in Part C since they cannot in Part B?**

A: Yes, foster parents can sign in Part C in Ohio. The legal provision in Part B that prohibits foster parents from signing consents does not exist in Part C.

**Q32: Do parents still retain educational rights when their child is removed?**

A: It depends. If the judicial order grants legal custody without limitation to a particular person, the biological parent would generally not retain educational rights.

**Q33: What does “custody without limitation” mean?**

A: Legal custody involves the ability to make multiple decisions for a child including health and education decisions. It is possible that a judge may modify legal custody around the ability to make decisions in one or more of these areas, so you will have to review the judicial order.

**Q34: If a child is in legal custody without limitation, do we need to reach out to the biological parent to sign consents for the child?**

A: No. Legal custody without limitation includes the ability to make education decisions for the child.

**Q35: If a biological parent is contacted and does not respond, isn't this a “silent no” for EI?**

A: Under IDEA, biological parents are presumed to be the parent for EI purposes when they attempt to act as the parent in EI. By contacting the parent via multiple methods and waiting 14 days, we are giving that biological or adoptive parent the opportunity to act as the parent before moving on to someone else who meets the definition of parent.

**Q36: Does 303.27 (A)(4) apply only to grandparents or relatives?**

A: No. This provision does apply to grandparents and relatives, but it also applies to any individual with whom the child lives or who is responsible for the child's welfare. Any of those persons could be considered the parent in EI.

**Q37: Why is DODD looking at just the federal law?**

A: The updated guidance incorporates both state and federal law. The federal law lays out multiple categories of persons who can be a parent in EI. State law around the definition of custody includes the ability to make educational decisions for the child.

**Q38: If the child is in legal custody of children services, does that mean the caseworker would sign?**

A: Not necessarily. You would need to contact the agency to determine who is authorized to sign consents.

**Q39: When does the guidance go into effect?**

A: Please begin to implement guidance immediately.

**Q40: Is a copy of the judicial order required to be in the child's record?**

A: It is best practice to keep a copy of the judicial order in the child's record.

**Q41: If a non-biological parent claims to have legal custody but has no paperwork, how should we proceed?**

A: You will need to obtain the order. This order can be obtained from the court that issued the order.

**Q42: Can we still use consent from biological parents if they do not have legal custody?**

A: You must review the judicial order and seek consent from the person who has legal custody without limitation.

**Q43: If the Service Coordinator is unable to obtain consent from the person with legal custody, how should we proceed?**

A: The person with legal custody must provide consent. You would handle this the same way you would handle obtaining consent when legal custody is not an issue.

**Q44: If someone has a power of attorney, is this the same as a judicial order awarding legal custody?**

A: No. Those are not the same. However, depending on the way the power of attorney is written, that person who holds it may be able to act as the parent in EI if that person meets one of the categories of parent.