



MEMORANDUM

TO: Ohio Early Intervention Programs and Providers

FROM: Ohio Department of Health

RE: Changes to OAC §3701-8-01 and September 5, 2013 OSEP Letter

DATE: September 30, 2013

This Memorandum is to inform you of the recent change to the Ohio Administrative Code (OAC) that could impact the provision of early intervention services in Ohio and to share recent communications between the Office of Special Education Programs (OSEP) and the Ohio Department of Health (ODH).

Rule Revisions

Effective September 5, 2013, OAC §3701-8-01 includes non-exhaustive definitions for early intervention services and qualified personnel. The following excerpts include underlined text has been added to paragraphs (S) and (HHH) of the rule:

- (S) “Early intervention services”¹ are developmental services that: are provided under public supervision, are selected in collaboration with the parents; are provided at no cost to families except for a system of payments; are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant’s or toddler’s development, as identified by the IFSP team, in any one or more of the following areas, including physical, cognitive, communication, social or emotional, or adaptive development; meet the standards of the State in which the services are provided; are provided by qualified personnel; are provided in natural environments to the maximum extent appropriate; are provided in conformity with an IFSP adopted by the State; and include all of the following services:
 1. Assistive technology devices and services;
 2. Audiology services;
 3. Family training, counseling and home visits;
 4. Health services;
 5. Medical services
 6. Nursing services

¹ Each service type is defined elsewhere in the same rule; some services have limitations per the IDEA Part C regulations.

7. Nutrition services;
8. Occupational therapy;
9. Physical therapy;
10. Psychological services;
11. Service coordination services;
12. Sign language and cued language services;
13. Social work services;
14. Special instruction;
15. Speech-language pathology services;
16. Transportation (and related costs);
17. Vision services; and
18. The above listed services do not comprise an exhaustive list of the type of services that may constitute early intervention services. Nothing in this paragraph prohibits the identification in the IFSP of another type of service as an early intervention service provided that it meets the criteria identified above.

- (HHH) “Qualified personnel” means personnel who have met Ohio’s approved or recognized certification, licensing, registration or credential that apply to the areas in which the individuals are conducting screenings, evaluations, assessments or services. The following are the types of qualified personnel who provide early intervention services:

1. Audiologists;
2. Family therapists;
3. Nurses;
4. Occupational therapists;
5. Orientation and mobility specialists;
6. Pediatricians and other physicians for diagnostic and evaluation purposes;
7. Physical therapists;
8. Psychologists;
9. Registered dieticians;
10. Social workers;
11. Special educators, including teachers of children with hearing impairments (including deafness) and teachers of children with visual impairment (including blindness);
12. Speech and language pathologists;
13. Vision specialists, including ophthalmologists and optometrists; and
14. This is not an exhaustive list of the types of qualified personnel that may provide early intervention service. Nothing prohibits the identification in the IFSP of another type of personnel that may provide early intervention services, provided such personnel meet the requirements as “qualified personnel” as set forth in this paragraph and provide services in accordance with Ohio Administrative Code chapter 3701-8 and 34 CFR Part 303.

The complete rule is attached and can also be found at:

<http://www.odh.ohio.gov/~media/ODH/ASSETS/Files/rules/final/3701-1%20to%203701-9/3701-8/3701-8-01.ashx> .

Importantly, the Individualized Family Service Plan (IFSP) team under IDEA Part C must identify the unique developmental needs of the particular child and the IFSP outcomes, and must identify the services needed to meet those outcomes by examining all early intervention service options, including other types of services that must meet the criteria in the rule cited above. In addition, when an early intervention service provider agrees to provide a service, the provider must be qualified and must provide the service in alignment with the IDEA Part C requirements.

OSEP Communications

By letter dated September 5, 2013, OSEP requested that ODH notify Ohio's Early Intervention Service programs and providers of that letter and certain actions required by OSEP in relation to ODH's FFY2013 IDEA Part C application. (Letter attached to this Memorandum). As Ohio's Lead Agency for IDEA Part C, has undertaken the following as required by OSEP:

1. ODH revised the definitions of early intervention services and qualified personnel. ODH will provide OSEP with a copy of the revised rule as well as this Memorandum by October 1, 2013;
2. ODH made several assurances to OSEP as set forth in the September 5, 2013 letter; and,
3. ODH revised the FFY13 application to indicate that it will make the necessary revisions to its policies and procedures, and methods to be consistent with the requirements of the 2011 IDEA Part C regulations.

With these actions and assurances, the State of Ohio again demonstrates its commitment to our statewide system of early intervention services for all infants and toddlers with disabilities and their families as required by IDEA, Part C and OSEP. ODH will ensure compliance with IDEA Part C, including making available early intervention services if identified as needed by the child's IFSP team necessary to meet the unique developmental needs of the infant or toddler, and provided by qualified personnel.

If you have questions after reviewing this Memorandum, the revised OAC 3701-8-01, and the September 5, 2013 OSEP letter, please contact ODH's Help Me Grow Early Intervention program at (614) 644-8389.

3701-8-01 Definitions.

As used in this chapter

- (A) "Assessment" as it applies to early intervention means the ongoing procedures used by qualified personnel to identify the child's unique strengths and needs and the early intervention services appropriate to meet those needs.
 - (1) A "child assessment" means the procedures used to identify the unique strengths and needs of that infant or toddler and the identification of early intervention services appropriate to meet those needs.
 - (2) A "family-directed assessment" means the procedures used to identify the resources, priorities, and concerns of the family and the identification of the supports and early intervention services appropriate to enhance the family's capacity to meet the developmental needs of that infant or toddler.
- (B) "Assessment" as it applies to home visiting means the ongoing procedures used by qualified personnel to assess a child and family's resources, strengths, priorities, needs and concerns.
- (C) "Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain or improve the functional capabilities of children with disabilities. This term does not include a medical device that is surgically implanted, including a cochlear implant, or the optimization (e.g., mapping), maintenance or the replacement of that device.
- (D) "Assistive technology service" means any service that directly assists an infant or toddler with a disability in the selection, acquisition, or use of an assistive technology device, including:
 - (1) The evaluation of the needs of a child with a disability, including a functional evaluation of the infant or toddler in the child's customary environment;
 - (2) Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by infants and toddlers with disabilities;
 - (3) Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing or replacing assistive technology devices;
 - (4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;
 - (5) Training or technical assistance for an infant or toddler with a disability, or, if appropriate, that child's family; and
 - (6) Training or technical assistance for professionals (including individuals providing early intervention services) or other individuals who provide services to or are otherwise substantially involved in the major life functions of individuals with disabilities.

- (E) "Audiology services" include:
- (1) Identification of children with auditory impairments using at-risk criteria and appropriate audiologic screening techniques;
 - (2) Determination of the range, nature, and degree of hearing loss and communication functions, by use of audiological evaluation;
 - (3) Referral for medical or other services necessary for the habilitation or rehabilitation of an infant or toddler with a disability who has an auditory impairment;
 - (4) Provision of auditory training, aural rehabilitation, speech reading and listening devices, orientation and training, and other services;
 - (5) Provision of services for prevention of hearing loss; and
 - (6) Determination of the child's individual amplification, including selection, fitting, and dispensing appropriate listening and vibrotactile devices, and evaluating the effectiveness of those devices.
- (F) "Centralized coordination contractor" means the entity which provides administration and oversight of help me grow's public awareness, child find, central directory, referral, and contractor assignment activities for individuals referred to help me grow, as determined through a contract, grant or other agreement with the department of health.
- (G) "Child find" means the strategies and activities which identify expectant mothers, first-time mothers, first-time fathers, low income and military families with infants and toddlers; infants and toddlers with developmental delays or disabilities, and infants or toddlers with diagnoses with a high probability of resulting in a developmental delay who may be eligible for help me grow.
- (H) "Clearly not feasible" means family circumstances which made it impossible to comply with Chapter 3701-8 of the Administrative Code.
- (I) "Comparable screening" means a screening tool which is not required in help me grow, but which is suitable for substitution for a required vision, hearing, or nutrition screening.
- (J) "Consent" means that permission is provided once an individual has been fully informed of all information relevant to the activity for which consent is sought.
- (K) "Convenient" means the reasonable attempts were made to schedule screenings, evaluations, assessments, meetings and visits in settings and times the family preferred.
- (L) "Department" means the Ohio department of health.
- (M) "Developmental delay" or "delay" means functioning at one and one half standard deviations below the mean or more in at least one of the following areas:
- (1) Adaptive development;
 - (2) Cognitive development;

- (3) Communication development;
 - (4) Physical development; or
 - (5) Social or emotional development.
- (N) "Developmental evaluation" means the timely, comprehensive, and multi-disciplinary procedures used by qualified personnel to determine a child's eligibility for early intervention.
- (O) "Director" means the director of health or his or her authorized designee.
- (P) "Early intervention" means the statewide program authorized by part C of the "Individuals with Disabilities Education Act."
- (Q) "Early intervention service coordination contractor" means any entity that provides early intervention service coordination services, administration, or oversight of help me grow early intervention through a contract, grant, or other agreement with the department.
- (R) "Early intervention service provider" or "EIS provider" means an entity (whether public, private, or nonprofit) or an individual that provides early intervention services, whether or not the entity or individual receives federal funds under IDEA.
- (S) "Early intervention services" are developmental services that: are provided under public supervision, are selected in collaboration with the parents; are provided at no cost to families, except for a system of payments; are designed to meet the developmental needs of an infant or toddler with a disability and the needs of the family to assist appropriately in the infant's or toddler's development, as identified by the IFSP team, in any one or more of the following areas, including physical, cognitive, communication, social or emotional, or adaptive development; meet the standards of the State in which the services are provided; are provided by qualified personnel; are provided in natural environments to the maximum extent appropriate; are provided in conformity with an IFSP adopted by the State; and include all of the following services:
- (1) Assistive technology devices and services;
 - (2) Audiology services;
 - (3) Family training, counseling and home visits;
 - (4) Health services;
 - (5) Medical services;
 - (6) Nursing services;
 - (7) Nutrition services;
 - (8) Occupational therapy;
 - (9) Physical therapy;
 - (10) Psychological services;

- (11) Service coordination services;
 - (12) Sign language and cued language services;
 - (13) Social work services;
 - (14) Special instruction;
 - (15) Speech-language pathology services;
 - (16) Transportation (and related costs);
 - (17) Vision services; and
 - (18) The above listed services do not comprise an exhaustive list of the type of services that may constitute early intervention services. Nothing in this paragraph prohibits the identification in the IFSP of another type of service as an early intervention service provided that it meets the criteria identified above.
- (T) "Early intervention system of payment provider" means an entity who is approved to provide early intervention services and is reimbursed for the services provided through a provider agreement with the Ohio department of health.
 - (U) "Evidence-based home visiting model" means a service delivery model designated by the U.S. department of health and human services which meets at least one of the following criteria:
 - (1) At least one high-quality or moderate-quality impact study of the model finds favorable, statistically significant impacts in two or more of the eight outcome domains; or
 - (2) At least two high-quality or moderate-quality impact studies of the model using non-overlapping analytic study samples find one or more favorable, statistically significant impacts in the same domain.
 - (V) "Evidence-based parenting curriculum" means an education tool used with parents to teach topics about parenting which has demonstrated research effects for the purpose and goals of its use.
 - (W) "Exceptional family circumstances" are unique situations specified by the family that prevent required program components from being completed within required time lines.
 - (X) "Expectant first-time mother" means a pregnant woman preparing to give birth to her first child. This does not include individuals preparing to adopt or individuals who have given birth but not raised a child due to the death of the child, the adoption of the child, or the termination of parental rights to the child.
 - (Y) "Families" means at least one expectant first-time mother or parent and at least one infant or toddler.
 - (Z) "Family plan" as it applies to the home visiting program means a written plan that identifies the activities that will be provided or carried out in the delivery of services for eligible individuals.
 - (AA) "Family training, counseling and home visits" means services provided, as

appropriate, by social workers, psychologists, and other qualified personnel to assist the family of an infant or toddler with a disability in understanding the special needs of the child and enhancing the child's development.

- (BB) "Federal poverty level" or "FPL" is the level of household income by family size as reported in the federal register by the United States department of health and human services, published on or before April first of each calendar year.
- (CC) "First-time father" means a father who is raising his first biological or adopted child.
- (DD) "First-time mother" means a mother who has given birth to or adopted her first child.
- (EE) "Functional outcomes" are goals that are necessary and functional for the child's and family's life; reflect real-life contextualized settings; jargon-free; discipline-free; and emphasizes the positive; is based on the priorities of the family, and describes both the child's strengths and needs based on information from evaluation or assessment.
- (FF) "Health services" means services necessary to enable an otherwise eligible child to benefit from the other early intervention services the child needs.
- (GG) "Help me grow" or "HMG" is the name of Ohio's statewide prenatal to age three home visiting and early intervention programs overseen and administered by the Ohio department of health.
- (HH) "Home visit" is a location or method for service delivery which may be in the child's or family's place of residence or a community location acceptable to the family.
- (II) "Home visitor" is the individual who delivers services during home visits within the HMG home visiting program.
- (JJ) "Home visiting contractor" means any entity which provides services within the help me grow home visiting program through a contract, grant or other agreement with the department.
- (KK) "Individualized family service plan" or "IFSP" means a written plan for providing early intervention services to an infant or toddler with a disability and the infant or toddler's family in the help me grow early intervention program.
- (LL) "Individuals with Disabilities Education Act" or "IDEA" is the federal law addressing the education of children with disabilities codified at 20 U.S.C. section 1400-1482 and federal regulations codified at 34 C.F.R. parts 300 and 303 as amended and in effect on July 1, 2012.
- (MM) "Infant" means a child from birth through twelve months of age.
- (NN) "Infant or toddler with a disability" means an individual under three years of age who needs early intervention services because the individual is experiencing a developmental delay, as measured by appropriate diagnostic instruments and procedures in one or more of the following areas: adaptive development, cognitive development, communication development, physical development, social or emotional development; or has a diagnosed physical or mental condition that has a high probability of resulting in developmental delay.

- (OO) "Informed clinical opinion" means the professional knowledge and expert opinion used to reach decisions about a child's functional and behavioral strengths and needs during the evaluation and assessment processes.
- (PP) "Interim IFSP" means an IFSP which is completed and signed by the parent before an assessment has been conducted in order to start immediately-needed services for the child.
- (QQ) "Local education agency" or "LEA" means a public board of education or other public authority within Ohio for either administrative control or direction of, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of the state.
- (RR) "Medical services" means services provided by a licensed physician or physician's assistant for diagnostic or evaluation purposes to determine a child's developmental status and need for early intervention services.
- (SS) "Multi-disciplinary" means the involvement of two or more separate disciplines or professions, and with respect to evaluation of the child and assessments of the child and family, may include one individual who is qualified in more than one discipline or profession. With respect to the IFSP team, it must include the involvement of the parent and two or more individuals from separate disciplines or professions and one of these individuals must be the service coordinator.
- (TT) "Native language" means when used with respect to an individual who is limited English proficient, the language normally used by an individual, or in the case of a child, the language normally used by the parents of the child. For evaluations and assessments, it is the language normally used by the child, if determined developmentally appropriate for the child by qualified personnel conducting the evaluation and assessment. When used with respect to an individual who is deaf or hard of hearing, blind or visually impaired, or for an individual with no written language, it means the mode of communication that is normally used by that individual, such as sign language, braille, or other communication.
- (UU) "Natural environments" means settings that are natural or typical for a same-aged infant or toddler without a disability.
- (VV) "Nursing services" means services provided by qualified personnel which include: the assessment of health status for the purpose of providing nursing care, including the identification of patterns of human response to actual or potential health problems; provision of nursing care to prevent health problems, restore or improve functioning, and promote optimal health and development; and the administration of medications, treatments, and regimens prescribed by a licensed physician.
- (WW) "Nutrition services" means services provided by qualified personnel who conduct individual assessments in nutritional history and dietary intake, anthropometric, biochemical, and clinical variables, feeding skills and problems, or food habits and preferences; develop and monitor appropriate plans to address the nutritional needs; and make referrals to appropriate community resources to carry out nutrition goals.
- (XX) "Occupational therapy" means services provided by qualified personnel designed to address the functional needs of an infant or toddler with a disability related to adaptive development, adaptive behavior, and play, sensory, motor, and postural

development. These services are designed to improve the child's functional ability to perform tasks in home, school, and community settings and include identification, assessment and intervention; adaption of the environment and selection, design, and fabrication of assistive and orthotic devices to facilitate development and promote the acquisition of functional skills; and prevention or minimization of the impact of initial or future impairment, delay in development, or loss of functional ability.

- (YY) "Parent" means the adult caregiver responsible for a child's well-being, unless otherwise specified in this chapter.
- (ZZ) "Parenting education" means sharing age-appropriate child development information, modeling appropriate activities and behaviors, and answering questions about child development with a parent of a child in the home visiting program.
- (AAA) "Personally identifiable information" means information which can identify an individual, including, but not limited to: child's name; name of the child's parent or other family member; address of the child or child's family; a personal identifier, such as the child's social security number or identification number; a list of personal characteristics that would make the child's identity easily traceable; or other information that would make the child's identity easily traceable.
- (BBB) "Physical therapy" means services provided by qualified personnel to address the promotion of sensorimotor function through enhancement of musculoskeletal status, neurobehavioral organization, perceptual and motor development, cardiopulmonary status, and effective environmental adaption. These services include screening, evaluation, and assessment of children to identify movement dysfunction; obtaining, interpreting, and integrating information appropriate to program planning to prevent, alleviate, or compensate for movement dysfunction and related functional problems; and providing individual and group services or treatment to accomplish any of the above.
- (CCC) "Primary referral sources" means those individuals making referrals into help me grow and include hospital personnel, physicians, parents, child care programs, early learning programs, local education agencies and schools, public health facilities, other public health or social service agencies, other clinics and health care providers, public agencies and staff in the child welfare system, including child protective services and foster care, homeless family shelters, and domestic violence shelters and agencies.
- (DDD) "Prior written notice" means notification provided to the parent of an infant or toddler with a disability by an early intervention service provider in advance of an action and in writing which informs the parent of an action that is being proposed or refused, the reasons for taking the action, and the rights available to the parent.
- (EEE) "Procedural safeguards" means the procedures providers must adhere to in order to ensure program participants their rights.
- (FFF) "Program referral" is the activity of making an individual known from a centralized coordination contractor to an early intervention service coordination contractor or a home visiting contractor for the start of program participation within help me grow.
- (GGG) "Psychological services" means services provided by qualified personnel for administering psychological and developmental tests and other assessment

procedures; interpreting assessment results; obtaining, integrating, and interpreting information about child behavior and child and family conditions related to learning, mental health, and development; and planning and managing a program of psychological services, including psychological counseling for children and parents, family counseling, consultation on child development, parent training, and education programs.

(HHH) "Qualified personnel" means personnel who have met Ohio's approved or recognized certification, licensing, registration, or credential that apply to the areas in which the individuals are conducting screenings, evaluations, assessments or services. The following are the types of qualified personnel who provide early intervention services:

- (1) Audiologists;
- (2) Family therapists;
- (3) Nurses;
- (4) Occupational therapists;
- (5) Orientation and mobility specialists;
- (6) Pediatricians and other physicians for diagnostic and evaluation purposes;
- (7) Physical therapists;
- (8) Psychologists;
- (9) Registered dietitians;
- (10) Social workers;
- (11) Special educators, including teacher of children with hearing impairments (including deafness) and teachers of children with visual impairments (including blindness);
- (12) Speech and language pathologists;
- (13) Vision specialists, including ophthalmologists and optometrists; and
- (14) This is not an exhaustive list of the types of qualified personnel that may provide early intervention service. Nothing prohibits the identification in the IFSP of another type of personnel that may provide early intervention services, provided such personnel meet the requirements as "qualified personnel" as set forth in this paragraph and provide services in accordance with Ohio Administrative Code chapter 3701-8 and 34 CFR Part 303.

(III) "Record" includes a document, device or item, regardless of physical form or characteristic, including electronic format, created or received for an individual in help me grow, from system referral through program exit.

(JJJ) "Screening" means the administration of appropriate instruments by qualified personnel for the purpose of identifying concerns in referred or current program participants which will result in a comprehensive developmental evaluation or referral to a qualified professional who can address the identified concerns.

- (KKK) "Service coordination services" means the services provided by qualified personnel to assist and enable an infant or toddler with a disability and the child's family to receive the services and rights which the rules in this chapter require, including procedural safeguards.
- (LLL) "Service coordinator" is the individual who 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 by help me grow early intervention.
- (MMM) "Service provider" is any individual or entity providing services to a program participant in help me grow.
- (NNN) "Sign language and cued language services" means the services provided by qualified personnel which include teaching sign language, cued language, and auditory or oral language, providing oral transliteration services such as amplification, and providing sign and cued language interpretation.
- (OOO) "Social work services" means services provided by qualified personnel to evaluate a child's living conditions and patterns of parent-child interactions, prepare a social or emotional developmental assessment of the infant or toddler within the family context, provide individual and family-group counseling with parents and appropriate skill-building activities with the infant or toddler and parents, work with problems in the living situation of an infant or toddler with a disability and the family, and identify, mobilize, and coordinate community resources to enable the maximum benefit from early intervention services.
- (PPP) "Special instruction services" means services provided by qualified personnel to promote an infant or toddler's acquisition of skills in a variety of developmental areas, including cognitive processes and social interaction; curriculum planning, including the planned interaction of personnel, materials, and time and space, that leads to achieving the outcomes in the IFSP for the infant or toddler with a disability; providing families with information, skills, and support related to enhancing the skill development of the child; and working with the infant or toddler with a disability to enhance the child's development.
- (QQQ) "Speech-language pathology services" means services provided by qualified personnel to identify communication or language disorders or delays in development of communication skills, including the diagnosis and appraisal of specific disorders and delays in those skills; refer for medical or other professional services necessary for habilitation or rehabilitation of children with communication or language disorders and delays in development of communication skills; and provide services for the habilitation, rehabilitation, or prevention of communication or language disorders and delays in development of communication skills.
- (RRR) "Statewide data system" means the early track data system administered and maintained by the department of health for HMG.
- (SSS) "Surrogate parent" means an individual who has been determined necessary and appropriate to represent the rights of an infant or toddler with a disability, who has been assigned by the department, and functions in place of a parent with respect to the child's participation in early intervention.
- (TTT) "System administrator" is the individual responsible for interaction with the department's electronic data system and oversight of data use.

(UUU) "System referral" is the instance when a potentially eligible individual is made known to a centralized coordination contractor with the following information: child's age; child's county of residence; parent's first and last name; and telephone number; e-mail address; or mailing address.

(VVV) "Toddler" means a child who is at least thirteen, but less than thirty-six months of age.

(WWW) "Transition" means the change within or exit from HMG services including:

- (1) Transfer or discharge from a hospital or other facility;
- (2) Exit from HMG due to ineligibility at age three years; or
- (3) Exit from HMG due to other reasons.

(XXX) "Transition planning conference" means the meeting held for a child in early intervention after the child is at least two years and three months of age and no more than three years of age for the purpose of discussing future placements, steps and procedures to prepare the child for changes in service delivery, including steps to help the child adjust to and function in a new setting after the child transitions out of early intervention.

(YYY) "Transportation and related costs" means the cost of travel and other costs that are necessary to enable an infant or toddler with a disability and the child's family to receive early intervention services.

(ZZZ) "Vision services" means services provided by qualified personnel to evaluate and assess visual functioning, including the diagnosis and appraisal of specific visual disorders, delays, and abilities that affect early childhood development; referral for medical or other professional services necessary for habilitation or rehabilitation of visual functioning disorders, or both; and provide communication skills training, orientation and mobility training for all environments, visual training, and additional training necessary to activate visual motor abilities.

(AAAA) "Ward of the state" means a child who is, as determined by the state of residence, a foster child, unless the foster parent meets the definition of a parent, as defined in rule 3701-8-07 of Administrative Code; or is in the custody of a the state child welfare agency or a local public child services agency.

(BBBB) "Written notification of IFSP meeting" means a letter or form sent by a child's service coordinator to the family, individuals participating in any assessments, and service providers which informs participants of the date, time and location of an upcoming annual IFSP meeting.

Effective: 09/05/2013

R.C. 119.032 review dates: 06/18/2013 and 09/01/2017

CERTIFIED ELECTRONICALLY

Certification

08/26/2013

Date

Promulgated Under:	119.03
Statutory Authority:	3701.61
Rule Amplifies:	3701.61
Prior Effective Dates	8/8/2005, 7/16/10, 9/3/12



UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

SEP - 5 2013

Honorable Theodore E. Wymyslo
Director
Ohio Department of Health
246 North High Street
Columbus, Ohio 43215

Dear Dr. Wymyslo:

We appreciate receiving, on July 29, 2013, your letter on behalf of the Ohio Department of Health (ODH) responding to my June 27, 2013 letter regarding Ohio's Federal fiscal year (FFY) 2013 application under Part C of the Individuals with Disabilities Education Act (IDEA Part C). Your letter also transmitted ODH's updated FFY 2013 IDEA Part C application, and amended ODH's original April 19, 2013 application to the Office of Special Education Programs (OSEP).

Ohio has addressed two of the three major requirements in OSEP's June 2013 correspondence. However, Ohio must take additional actions (as described below) with respect to one requirement to make its application substantially approvable under IDEA Part C. This letter identifies the additional actions required and responds to other issues raised in your July 27, 2013 letter.

With regard to the requirements that Ohio has addressed, first, as required by OSEP's June 26, 2013 memorandum, ODH revised its application to indicate that it will make the necessary revisions to its policies, procedures, and methods to be consistent with the requirements of the 2011 IDEA Part C regulations. Specifically, ODH indicated under Sections II.A. 2, 3a, 3b, 4, 7, 8, 9, 10, and 11 of its application that the revisions would be made and submitted to OSEP not later than June 30, 2014 and ODH certified that it will implement all of these and other IDEA Part C requirements throughout the period Ohio uses its IDEA Part C FFY 2013 funds.

Second, your July 29, 2013 response confirmed that Ohio rule 3701-8-01 would be revised to be consistent with the IDEA Part C Federal requirements and that Ohio's revised rule would have become effective as of September 2, 2013. The rule revision is necessary because, as noted in OSEP's June 2013 correspondence, Ohio's definitions for "early intervention services" and "qualified personnel" in Ohio rule 3701-8-01 are inconsistent with the Federal IDEA Part C regulations in 34 CFR §303.13(c) and (d), because Ohio does not include an express provision indicating that the lists of early intervention services and personnel in Ohio's rule is illustrative and not exhaustive.

We appreciate Ohio taking these initial two steps. With respect to the third requirement referenced in OSEP's June 2013 correspondence, ODH was to submit a specific written assurance to OSEP that the State will: 1) ensure compliance in the interim with the IDEA Part C regulations throughout the FFY 2013 grant period, including making available early intervention services, which could include applied behavior analysis or ABA therapy, if identified by the child's Individualized Family Service Plan (IFSP) Team as necessary to meet the unique developmental needs of a particular infant or toddler; and 2) send a memorandum to all early intervention service (EIS) programs and providers to inform them of these actions required by OSEP that affect the provision of early intervention services in the State under Part C, and submit such memorandum to OSEP by August 1, 2013.

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The Department of Education's mission is to promote student achievement and preparation for global competitiveness by fostering educational excellence and ensuring equal access.

In its July 27, 2013 letter, ODH confirmed that Ohio rule 3701-8-01 has been revised to be consistent with the requirement in the Federal IDEA Part C regulation in 34 CFR §303.13(c) and (d), and to include the express language that the list of early intervention services and qualified personnel is not exhaustive. ODH indicated that the amended rule would be effective as of September 2, 2013. ODH also proposed to submit a revised assurance to OSEP to comply with this requirement until the revision is effective. Specifically, ODH requested that OSEP accept Ohio's proposed amended assurance language that does not explicitly reference ABA therapy: "Ohio will ensure compliance in the interim with IDEA Part C regulations throughout the FFY 2013 grant period, including making available early intervention services, if identified by the child's Individualized Family Services Plan (IFSP) team as necessary to meet the unique needs of a particular infant or toddler." ODH explained that it did not wish to single out ABA therapy over other types or methods of appropriate early intervention services in its assurance, particularly given allegations in pending litigation.

OSEP appreciates that Ohio does not wish to identify a particular early intervention service in its assurance, and that the determination of the appropriateness of early intervention services for a particular child is an individualized determination made by the child's IFSP Team (which includes the parent). However, OSEP assumes, unless ODH notifies OSEP in writing upon receipt of this letter, that ODH will include in the non-exhaustive list of early intervention services that an IFSP can identify and that the State will make available if identified as needed by the IFSP Team under IDEA Part C, the early intervention service referred to as ABA therapy, both under 34 CFR §303.13 and Ohio's rule. OSEP also requests that ODH send a memorandum to its EIS programs and providers to inform them of this letter and the actions required by OSEP, and that ODH submit to OSEP by October 1, 2013 a copy of the memorandum to its EIS programs and providers along with the final amended Ohio rule 3701-8-01. Enclosed please find assurance language that ODH must use to address this outstanding issue. Once we receive this signed, specific assurance, we will move forward with Ohio's FFY 2013 IDEA Part C grant award.

Finally, I wish to respond to two other issues in your July 27, 2013 letter and the pending litigation. Your July 27, 2013 letter relies in part upon OSEP's July 1, 2013 determination letter in which OSEP indicated that Ohio "meets requirements" under IDEA sections 616 and 642 as somehow satisfying the grant-specific eligibility requirements. However, OSEP's 2013 determination letter was based primarily on Ohio's compliance with specific requirements reported by ODH in its annual performance report; this determination letter did not directly relate to the additional IDEA Part C grant eligibility requirements, including the specific requirement that the State make available to an eligible child and family those early intervention services (such as ABA therapy) that are identified as needed by the child's IFSP Team.

As you know, OSEP is monitoring the pending litigation in Ohio and is concerned with any suggestion that the implementation of IDEA Part C is only a local, and not a State, responsibility. ODH, as the State lead agency under IDEA section 635(a)(10), has "a single line of responsibility" within the State of Ohio to implement IDEA Part C. Upon accepting IDEA Part C funds, ODH is responsible under sections 633, 634 and 635, for ensuring that Ohio has in place a "statewide" system that makes early intervention services available to all infants and toddlers with disabilities and their families in the State of Ohio. The Department will continue to monitor developments in the pending litigation as part of its monitoring of Ohio's use of IDEA Part C funds.

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We appreciate Ohio's commitment to making available early intervention services to infants and toddlers with disabilities and their families. We look forward to hearing from you so that we may complete our review of Ohio's FFY 2013 IDEA Part C grant application.

Sincerely,

A handwritten signature in black ink, appearing to read "Melody Musgrove", written over a circular stamp or seal.

Melody Musgrove, Ed.D.
Director
Office of Special Education Programs

Enclosure

cc: Wendy Grove, Ph.D.
Part C Coordinator

Suggested language for Required Ohio IDEA Part C Specific Assurance

As part of its Federal fiscal year (FFY) 2013 IDEA Part C grant award, Ohio hereby specifically assures that it shall:

- (1) Make all changes necessary to Ohio rule 3701-8-01 and any related documents to include the language in 34 CFR §303.13(c) and (d) to address and complete all actions as specified in OSEP's September 2013, June 27, 2013, and June 26, 2013 correspondence, to comply with IDEA Part C requirements, and submit to OSEP the revised rule and any related document that are required to be submitted under Section II.A. of the IDEA Part C FFY 2013 application, as soon as they are finalized, but no later than October 1, 2013;
- (2) Ensure that, throughout the period that the State uses its IDEA Part C FFY 2013 grant funds, all early intervention service (EIS) programs and providers in the State will comply with all requirements of IDEA Part C, including 34 CFR §303.13(c) and (d) and making available early intervention services to an infant or toddler with a disability and his or her family if identified by the child's IFSP team as necessary to meet the unique developmental needs of a particular infant or toddler;
- (3) Provide OSEP, by October 1, 2013, a copy of the memorandum notifying all EIS programs and providers that are part of the State's IDEA Part C early intervention system of any changes that affect the provision of early intervention services; and
- (4) Ensure that the statewide system of early intervention required by IDEA Part C, in 20 U.S.C. §§ 1431 through 1444 and regulations in 34 CFR Part 303, will be in effect throughout the FFY 2013 grant period.