

Early Support for Infants & Toddlers



Practice Guide: Identifying the “Parent” for Infants and Toddlers in Foster or Out-of-Home Care

Background

Studies have found that roughly half (35-68%) of infants and toddlers who encounter child welfare have developmental delays or disabilities, compared with only 5% to 10% of the general pediatric population.^{i,ii,iii,iv} Despite the high prevalence of developmental problems, infants and toddlers who encounter child welfare frequently do not receive the services they need. Even using stringent eligibility definitions, national data indicates an estimated 27.8% of these infants and toddlers qualify for services, but only 13.4% actually have Individualized Family Service Plans (IFSP).^v This gap highlights the critical importance of strong coordination between the child welfare system and ESIT.

IDEA Part C contains provisions designed to encourage such coordination and ensure qualifying infants and toddlers receive early intervention services. First, IDEA requires states to refer any child under age three who is involved in a substantiated case of child abuse or neglect for early intervention services.^{vi} Second, Part C requires the statewide early intervention system to include a comprehensive child find system,^{vii} which must ensure eligible infants and toddlers who are wards of the State are identified, evaluated, and served.^{viii} Finally, ESIT procedural safeguards must include procedures to protect the rights of infants and toddlers who are wards of the State.^{ix} ***

In Washington, wards of the State are those who are in the custody of the Children’s Administration of the Department of Social and Health Services through a voluntary placement agreement or court order and who are placed in licensed foster care or with a relative or other suitable person.^x

Additionally, there are many children who do not live with their parents, but are not in state custody or involved with child welfare. Children may be placed informally, by their parents, in the care of a relative or other adult. These individuals are not foster parents, but they act in the place of a parent, and are often willing to fulfill the role of “parent” in the ESIT process. These individuals are generally referred to as kinship caregivers.

Kinship caregivers are not always legal guardians, and in many cases there is no court proceeding and no judge has issued a court order placing the child in kinship care. Kinship caregivers can serve as ESIT parents in the absence of a court order, as long as the child is living with the caregiver and the caregiver is acting in the place of a parent. Family Resources Coordinators should consult with caregivers to ascertain the caregiver's appropriate role. If the caregiver is willing to fulfill the role of "parent" in the ESIT process, that person is the ESIT parent, with the authority to consent for evaluations and services, sign IFSPs, and participate in family services. The Department of Social and Health Services provides several resources for supporting kinship caregivers which are referenced at the end of this document.

Who should consent for eligibility evaluations and services and sign IFSPs for infants and toddlers who are in the custody of the Children's Administration (i.e. wards of the State)?

Determining who has the authority to consent for early intervention evaluations and services for children in the custody of the Children's Administration can be very complex. One study found that even most caseworkers and supervisors may be unsure who is primarily responsible for identifying developmental needs and ensuring appropriate services.^{xi} In many cases, foster parents or relative caregivers can consent for eligibility evaluations and services and sign IFSPs for infants and toddlers in their care. However, even though the child may be living with them, they are not always the appropriate or legal decision-makers. Caseworkers cannot consent for evaluations and services or sign IFSPs.

What is the child's caseworker's appropriate role in ESIT?

While they cannot serve as the ESIT parent, the caseworker is an important source of information for early intervention agencies and providers. First, caseworkers can provide information about the child welfare case, including whether the biological parents' rights have been limited and whether a judge has designated a guardian or education decision-maker. Second, the caseworker should be able to share some information about the child's and family's needs, routines, challenges, and goals, while respecting their privacy. With the ESIT parent's permission, caseworkers can attend IFSP and other meetings, advocate for the child's needs, and support the ESIT parent in his or her decision-making role. Finally, the caseworker should assist in service coordination and ensuring the child and family can participate fully in ESIT services.

What is the biological parents' role in ESIT?

It is important for ESIT Local Lead Agencies and providers to always respect the ongoing role of the biological parents of a child in the custody of the state, particularly when the child is living in out-of-home care. [Throughout this brief, the term biological parents will include those parents that adopted their child prior to him/her being taken into custody by the Children's Administration. This should not be confused with 'foster-to-adopt' parents who intend to adopt the child in the future.] Biological parents often retain the rights of parents and the authority to consent for ESIT evaluations and services, even when the child is living in a foster home, with relatives, or in a group setting (such as PICC the Pediatric Interim Care Center). Furthermore, many infants and toddlers who have been removed from home and become wards of the state ultimately will return to their parents' custody. Finally, many biological parents who eventually have their parental rights terminated still continue to be involved in their children's lives.

To determine who has the authority to serve as the ESIT parent and consent for early intervention evaluations and services for a child in the custody of the Children's Administration, the Family Resources Coordinator or other appropriate ESIT staff should adhere to the following steps and use the attached flow chart.^{xii}

Step 1. Is the child in the custody of the Children's Administration (i.e. a ward of the State)?

If the child is not involved with Child Welfare and is not in the custody of the State, no further action is needed. As noted previously, in the absence of a court order, kinship caregivers who are acting as parents may serve as the ESIT parent.

Step 2. Is a biological parent "attempting to act" as the parent in the ESIT process?

Most children in the custody of the Children's Administration are placed in foster care and living with foster parents or relative caregivers. The agency provides services to preserve and strengthen the family, while monitoring the children's safety. In addition, a biological parent may be active in the ESIT process even when the child is living out-of-home. "Attempting to act" is a phrase from IDEA, which means the parent, has shown interest in the ESIT process. For example, the parent may be seeking evaluations or participating in IFSP meetings or services.

- If no biological parent is attempting to act as the parent in the ESIT process, proceed to *STEP 4*.
- If a biological parent is attempting to act, proceed to *STEP 3*.

Step 3. *Has a judge limited the rights or authority of the biological parent to make education, medical, or other decisions related to early intervention?*

Sometimes, a juvenile court judge will limit a parent's rights to make education, medical, or other decisions for a child. In serious cases, a parent can lose all his or her parental rights. These actions must be taken via a court order or decree. The child's caseworker will know if parents' rights to participate in ESIT have been limited and should be able to provide a copy of the court order.

- If the biological parents' rights have not been limited, **that parent is the ESIT parent**, with the authority to consent for evaluations and services, sign IFSPs, and participate in family services.
 - However, in order to address immediate functioning in natural environments, providers will need to make every effort to engage both the biological parent and the primary daily caregiver (such as the foster parent) in meeting the needs of the infant or toddler.
- If a judge has limited the biological parent's rights to make decisions related to early intervention, proceed to *STEP 4*.

Step 4. *Has a judge designated a specific person to make education and related decisions for the child, to act as the child's "parent" or surrogate parent, or to be the child's guardian?*

Typically, when a juvenile court judge limits a parent's rights, he or she also will appoint another person or agency, such as DSHS, to be the child's guardian/custodian or education decision-maker. This will be done via a court order. The child's caseworker will know who the judge has designated as guardian or education decision-maker and the caseworker should be able to provide a copy of the court order.

When Children's Administration (or its Division of Child and Family Services) is granted custody of the child, it is designated as the child's guardian and is the designated decision-maker for most purposes. However, the caseworker will typically delegate some education decisions to the child's foster or relative caregiver. The foster or kinship caregiver may share this responsibility with the child's biological parent.

The caseworker cannot serve as the ESIT parent and so must delegate those decisions to someone willing to serve as **the ESIT parent**, with the authority to consent for evaluations and services, sign IFSPs, and participate in family services. Of note, foster parents and relative caregivers commonly make education and other decisions for children in their care and are permitted by IDEA and Washington state regulations to serve as the "parent" for ESIT services.

If the person identified by the caseworker as being delegated to serve as the ESIT parent is willing to go forward, that person serves as the ESIT parent. If the infant or toddler's foster or kinship caregiver (or other delegated decision maker) is unwilling to participate, the child's caseworker should be notified immediately.

Of note, there may be different person than the ESIT parent who has the authority to make non-IDEA decisions (such as regarding medical care) about the child. The Family Resources Coordinator should consult with the child's caseworker regarding the decision-maker who has the authority for referrals to, or coordination with, services that are not Part C services (such as those identified as "Other Services" in the IFSP process).

*In very rare cases, an ESIT parent is not identified or available and the agency must assign a **surrogate parent** for the infant or toddler. In those cases, proceed to step 5.*

Step 5: *If a surrogate parent is necessary, how should the agency assign one?*

IDEA requires procedures to protect the rights of infants or toddlers who do not have an appropriate ESIT "parent", particularly when the child is a ward of the state. The procedures must include a process to assign a surrogate parent, who will have the authority to consent for evaluations and services, sign IFSPs, and participate in family services. The surrogate cannot be an employee of the State lead agency or other State agency and cannot be any person or employee of any person providing early intervention services to the infant or toddler or family.^{.xiii} As such, *caseworkers cannot serve as surrogate parents.*

The surrogate parent must have the knowledge and skills needed to represent the child adequately and must not have any interest that conflicts with those of the child.^{xiv} Ideally, the surrogate parent should be someone who knows the child and will have an ongoing relationship with the child, such as a family member or friend. If no one else is available, the agency must recruit a volunteer. A surrogate parent should be in place within 30 days of the agency determining that one is needed.^{xv}

How much time should agencies take to identify the appropriate decision-maker or the need for a surrogate parent?

There is no time to lose when infants and toddlers need early intervention to support their development and learning. This is particularly true when the child has also been abused or neglected. Therefore, agencies should work with the child's caseworker to make all reasonable efforts to identify the appropriate decision-maker or determine if a surrogate parent is needed as quickly as possible. Immediate contact with the child's caseworker should yield the

information needed to navigate quickly through the flow chart. Unreasonable delays will violate the IDEA 45-day timeline to go from referral to IFSP meeting.

Child welfare cases are dynamic, and a child may be in the process of leaving or returning to the biological parent's home, leaving or arriving at a foster home, or having a guardian or decision-maker appointed. However, these changes often take much longer than anticipated. Therefore, once an appropriate ESIT parent is identified, agencies should proceed with evaluations and services immediately. Agencies should not wait for court action, even if it appears imminent. If a judge subsequently limits parental rights or appoints a different decision-maker, the agency and service providers can continue the evaluation process or provision of services with the new ESIT parent.

What if the Family Resources Coordinator or other ESIT staff or provider feels the ESIT parent is not acting in the child's best interest?

If the ESIT parent is not participating in meetings or services or is making decisions that appear not to be in the child's best interest, the Family Resources Coordinator or other appropriate person should contact the child's caseworker immediately to share their concerns.

How can Local Lead Agencies improve their outreach to infants and toddlers involved with Child Welfare?

- Encourage the active involvement of local Children's Administration supervisors and caseworkers in the County Interagency Coordinating Council. Use the County ICC to jumpstart coordinated efforts, particularly related to service coordination, delivery, and payment.
- Consider inviting the judicial officers involved in dependency cases to ICC meetings.
- Offer training on ESIT eligibility and services to judicial officers.
- Develop a joint process with local Children's Administration offices to facilitate referrals to ESIT.
- Organize trainings for caseworkers, foster parents, and parents involved with the child welfare system on how to recognize developmental delays in young children, how the ESIT referral process works, the services available through ESIT, and the importance of early intervention in the long-term health and development of the child. Caseworkers may not know the positive effects ESIT services can have on family preservation and reunification for maltreated infants and toddlers. Additionally, caregivers or caseworkers may not always recognize the need for early intervention, particularly if delays do not emerge until after the initial Child Health and Education Tracking (CHET) screening is done during the first 30 days

of out-of-home care. One study found that neither caseworkers nor foster parents are able to identify most children who need early intervention services, and that trainings can increase appropriate referrals and streamline the evaluation process.^{xvi}

- Seek training from local Children’s Administration offices on the child welfare system, procedures, and how best to serve young children and families involved with child welfare.
- Supply juvenile court judicial officers, advocates and caseworkers with a checklist of questions about young children’s developmental needs to use in case planning meetings or court hearings. Such a checklist can help ensure that young children’s development is monitored on an ongoing basis and early interventions are considered as part of service planning for each child. Also, knowing that questions will be asked in court regarding a child’s developmental status can help to elevate the importance of early intervention among the key players in the child welfare system. See the resources at the end of this brief for materials designed for judges and lawyers on this topic.
- Communicate with children’s Court-Appointed Special Advocates and other advocates in the child welfare case. They may have important information about the child and family and may be able to assist with service coordination and delivery.

Resources for Infants and Toddlers in Foster or Out-of-Home Care:

Washington Resources:

- Washington State Early Support for Infants and Toddlers Program: www.del.wa.gov/esit
- Washington Resources for Kinship Caregivers: www.dshs.wa.gov/kinshipcare/index.shtml
 - Key Publications: www.dshs.wa.gov/kinshipcare/publication.shtml
 - **Relatives Guide to Child Welfare Services** (DSHS 22-492x) is specifically for relative caregivers involved with the child welfare system.
 - **Consent to Health Care for the Child in Your Care: A Kinship Caregiver's Guide** (DSHS 22-1119x) This brochure explains a new law passed by the 2005 WA State Legislature which spells out a relative's rights and responsibilities.
- Washington ASDA Fostering Well-Being Care Coordination Unit
 - Care coordination services for children in out-of-home placement.
 - 1-800-422-3263 or dhsfwbccu@dshs.wa.gov
 - July 2011 Fact Sheet -- <https://fortress.wa.gov/dshs/adsaapps/about/factsheets/>

National Resources:

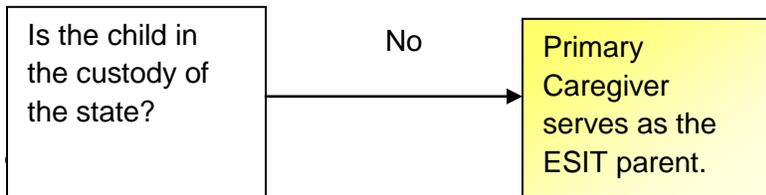
- ZERO TO THREE (2004) **Ensuring the Healthy Development of Infants in Foster Care: A Guide for Judges, Advocates and Child Welfare Professionals.**

- Available to download for free under the “popular resources” of the ZERO TO THREE Court Teams Project: www.zerotothree.org/maltreatment/court-teams/index.html
- National Council of Juvenile and Family Court Judges Technical Assistance Brief (2002) **Questions Every Judge and Lawyer Should Ask About Infants and Toddlers In the Child Welfare System.**
 - Available within the above noted brief or in coated paper stand alone format through the NCJFCJ online store: www.ncjfcj.org
- ABA Center on Children and the Law, NCJFCJ, ZERO TO THREE National Policy Center (2009) **Healthy Beginnings, Healthy Futures: A Judges Guide.**
 - Available to download from the Health of Court-Involved Infants, Toddlers and Preschoolers project:
www.americanbar.org/groups/child_law/projects_initiatives/child_and_adolescent_health.html
- Legal Center for Foster Care and Education - Special Education Decision-Making Series
 - <http://www.abanet.org/child/education/publications/specialeducation.html>
- National Early Childhood Technical Assistance Center
 - Referral Requirements Under CAPTA (Child Abuse & Prevention Treatment Act) and IDEA: www.nectac.org/topics/earlyid/capta.asp
 - Interagency Coordination: www.nectac.org/topics/intercoord/intercoord.asp
- Child Welfare Information Gateway – Child Welfare and IDEA Part C
 - www.childwelfare.gov/systemwide/service_array/earlychildhood/childwelfare.cfm
- Administration for Children & Families – Child Abuse & Prevention Treatment Act:
 - www.acf.hhs.gov/programs/cb/laws_policies/cblaws/capta/index.htm

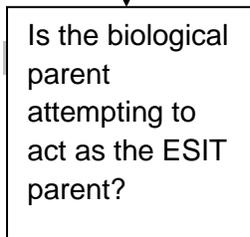


Identifying the “Parent” for Infants and Toddlers in Foster or Out-of-Home Care

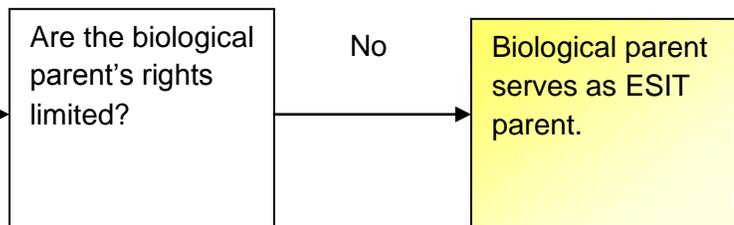
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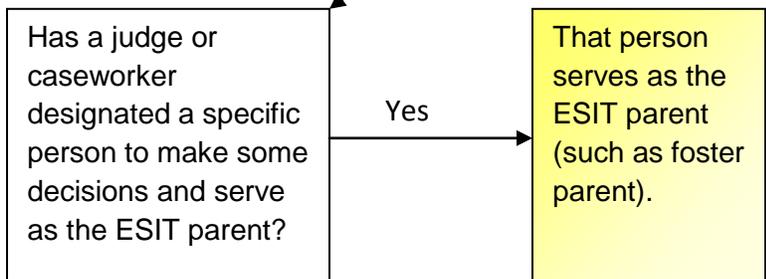
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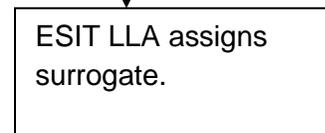
Step 3:



Step 4:



Step 5:



Endnotes:

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- ⁱ Helen Ward & Sun Young Yoon (2009). *Children at Risk in the Child Welfare System: Collaborations to Promote School Readiness*. Portland, ME: Catherine E. Cutler Institute for Child and Family Policy.
- ⁱⁱ Leslie et al. (2005) The Physical, Developmental, and Mental Health Needs of Young Children in Child Welfare by Initial Placement Type. *The Journal of Developmental and Behavioral Pediatrics*, 26: 3, pp. 177-185
- ⁱⁱⁱ Melmed, M E (2011). A Call to Action for Infants and Toddlers in Foster Care. *Zero to Three Journal*, vol. 31, no. 3, 29-34.
- ^{iv} Wulczyn, F. & Hislop, K.B (2002) Babies in Foster Care the Numbers Call for Attention, *Zero to Three*, Vol. 22:5.
- ^v Graham, M. A (2011). Opportunities in Florida's Child Welfare System to Address the Developmental Needs of Infants and Toddlers. *Zero to Three Journal*, vol. 31, no. 3, p.60.
- ^{vi} 20 USC §1437(a)(6). The Child Abuse Prevention and Treatment Act (CAPTA) has complementary language.
- ^{vii} 20 USC §1435(a)(5).
- ^{viii} 20 USC §1412(a)(3).
- ^{ix} 20 USC §1439(a)(5).
- ^x WAC 388-25-0010 (defining foster care); *see also* WAC 392-172A-01200 (defining ward of the state).
- ^{xi} Ward & Yoon (2009).
- ^{xii} Legal references for the flow chart are: WAC 392-172A-01125; 34 CFR §303.27; 34 CFR §300.30.
- ^{xiii} 20 USC §1439(a)(5).
- ^{xiv} 34 CFR §303.422.
- ^{xv} 20 USC §1415(b)(2)(B).
- ^{xvi} Ward & Yoon (2009).

Revised Practice Guide amended by Dr. Sheri Hill, ESIT Consultant, and ESIT Staff, in coordination with Department of Social and Health Services Children's Administration staff Michael Luque, Brenda Villarreal and Sheila Huber. Original Practice Guide prepared by Patricia Julianelle, JD, ITEIP Early Intervention Consultant. ESIT Practice Guides are prepared through ESIT's training and technical assistance projects, for the purpose of providing early intervention practitioners and other service providers' up-to-date information about IDEA, Part C requirements, practices and other topics of interest and importance to the field. If you have questions or ideas for future practice guides, contact Karen Walker at Karen.Walker@del.wa.gov.