



CAPTA referrals to the Family Infant Toddler (FIT) Program Frequently Asked Questions (FAQs)

Q: When a referral is first made who signs consent for the initial evaluation?

A: IDEA requires that someone must act in the role of parent with regards to consent for all steps in the early intervention process. This is still required for children involved with child protective services. When the child remains in the legal custody of his/her parents/guardians, the parent/guardian provides consent. When a child is in the legal custody of the state, the caseworker assigned to the case represents the state in its role as legal guardian to the child. In most other circumstances not related to IDEA, the caseworker can provide consent for services. However, for services provided under IDEA, a surrogate parent is required for children in state's custody. If the child has been placed out of the home in foster care, the foster parent can be asked to serve as the surrogate parent.

Q: What is the role of the parent(s)/guardian in the IFSP if the child is in the custody of the state and placed in foster care?

A: In most circumstances, the child's parents/guardian should be encouraged to participate in the IFSP as CYFD supports opportunities for parents to enhance their capacity to care for their children. There are a limited number of circumstances, typically because of safety reasons, that a parent's involvement may be limited or restricted. The CYFD Protective Service (PS) caseworker will be able to give direction as to how involved the parent should be in the IFSP process. If the plan is for the child to be reunified with the biological parent(s), it is likely that the treatment plan will include the biological parent(s)' involvement in the early intervention services. If so, the biological parents should be included in the IFSP meeting. In this situation, the foster parent or surrogate parent will still sign the consent for services while the child is in the state's custody. The role of and/or involvement of the parent may change during the provision of early intervention services. For example, if a child is reunified with the parent and custody returned to the parent, the parent's consent will be required for continuing services. If however, parental rights are terminated, the parent may no longer be involved in the provision of services.

Q: How should the FIT provider handle holding an IFSP meeting with the foster family and parents when parents are not supposed to know who the foster family is?

A: In the over whelming majority of circumstances, the foster family and the child's family know each other and work collaboratively to promote the best interest of the child. In addition, CYFD seeks to place children with relatives or in the child's community as often as possible. Therefore, it is very rare that a parent and foster parent will not know each other and know where one another lives. If a safety issue does exist and yet parental involvement is encouraged for the IFSP, the CYFD case worker can assist the FIT provider in identifying an appropriate and safe location which may be the provider's office or the CYFD office.

Q: What is the difference between legal guardianship, legal custody, and temporary custody?

A: In general, the term "legal guardianship" refers to the legally mandated authority to have care and control of a person under the age of 18. The extent of the decision-making authority and length of time that guardianship is in place is dependent upon the source of the guardianship decision – Probate Code, Kinship Guardianship Act or Children's code. Legal guardianship can be identified through an order of the court. The term "legal custody" refers to the condition that a person or agency may have over a person under the age of 18. Parents are automatically assumed to have legal custody of their children. A state or another person may only interfere with that through operations of the court or actions of the parents. "Temporary custody" refers to the period of time when, through operation of the Children's Code, a law enforcement officer places a child in the custody of the state. This custody is temporary in nature as it may last no longer than two days. If the state determines that continuing custody is necessary to protect the child, the state must file a petition with the courts.

Q: If a child is in State custody, can a foster family sign all intake paperwork, permission for evaluation, and an IFSP for child?

A: Yes, in accordance with IDEA and 7.30.8 NMAC the foster parent can act as the parent if the child is in state custody. In this role the foster parent can sign for the evaluation, the intake paperwork, and consent to the IFSP. If the foster parent does not feel comfortable in this role a surrogate parent can be assigned by the Department of Health.

Q: Who signs for medical releases that are subject to HIPAA regulations?

A: The person that is acting as the legal guardian or has legal custody would sign releases for medical information. If the state has custody and is the legal guardian, the caseworker would sign for the medical release. If CYFD has not taken custody the legal guardian would still be the parent(s) and they would have to sign for Medical releases as well as all E.I. paperwork.

Q: What is the role of the FIT provider agency when the parent(s) visit their child at the foster home or other location? What is the role of the CYFD worker in this case?

A: Visitation, that is, the time that the court has decided that the parent(s) shall spend with the child weekly/monthly is separate from the provision of early intervention services. When a parent is participating in early intervention services it is for the purpose of learning new skills and better understanding the child's needs, especially if the plan is for reunification. The parent should have visitation with their child when he or she can demonstrate the skills learned and engage in appropriate care giving interactions with the child.

The court order determines the parent's involvement with services and conditions of visitation. For example, the court order will dictate if the visits are supervised or unsupervised, how often, and how long. The court order may also contain some language requiring prohibited behaviors that would result in a visit being terminated or canceled. Foster parents, caseworkers or client service agents are all either employees or agents of the department, and can supervise visits. If a FIT provider has concerns about the behavior or conduct of the parent during early intervention sessions they should call the CYFD PS case worker who can work to restructure the process. This might include conducting the early intervention services at another location, having the CYFD PS case worker attend the early intervention session, or terminate the parent's involvement until the concern is addressed.

Q. When does a surrogate parent need to be appointed?

A: In most cases the foster parent can act in the role of parent in accordance with IDEA and 7.30.8 NMAC regulations. A surrogate parent shall be assigned if the child is in the custody of the state or tribe and the foster parent is unable or unwilling to act as the parent in the IFSP process. The service coordinator shall be responsible for determining the need for the assignment of a surrogate parent(s) and should contact the Department of Health – FIT Program. A surrogate parent may represent a child in all matters related to the evaluation and assessment of the child; the development and implementation of the IFSP; consent to provision of early intervention services; and any other rights established under Part C of IDEA.

Q: Who does a copy of the evaluation report and the IFSP go to?

A: If the child is in custody of the State, copies of the evaluation report and IFSP should be send to the CYFD caseworker. A copy of the IFSP should also be given to the foster family, if they are considered the "parent" in accordance with IDEA and 7.30.8 NMAC regulations. If the child is in CYFD custody but living with his/her parents, the IFSP should be provided to the CYFD caseworker and the child's parents.

If the child is not in the custody of the state, the IFSP should be provided to the child's parents/guardian. If a "Release of Information" has been signed by the parent authorizing the exchange of information with CYFD, a copy should also be provided to the CYFD caseworker.

Q: What should the FIT provider do if the CYFD-PS caseworker wants a copy of all documents, including case notes, contract notes and / or progress reports?

A: For a child in the custody of CYFD, the caseworker would typically require the results of any evaluations/examinations conducted and progress notes. The worker may also ask the provider to submit information regarding parental participation in the services if it has been ordered by the court. CYFD is allowed this information for children in the State's custody in the same manner that CYFD obtains school and IEP information on children in State's custody. However, if a child is not in the custody of the state, the child's parents/guardian must authorize the release of any information to CYFD.

Q: What should be done in the case that a home visit is seen as dangerous or unsafe for the FIT provider to do the visit?

A: If there is a reason that a worker has concern about entering a home, the FIT staff person should discuss that with his or her supervisor. If the situation is one that the FIT staff and supervisor agree that a worker should not enter the home, the FIT provider should contact CYFD-PS caseworker immediately and explain situation. There maybe times a visit has to take place in a neutral safe environment. Both FIT staff and CYFD PS workers should keep in mind that if the environment is not safe for the FIT provider it is likely that the environment is also unsafe for the child. If a provider knows of or suspects child abuse or neglect, he/she is mandated to report the concern immediately.

Q: How should the FIT provider promote good communication with CYFD?

A: The FIT service coordinator should give feedback to the CYFD-PS caseworker regarding the referral and should inform the caseworker of the results of the evaluation. The CYFD PS caseworker should be invited to the IFSP meeting and if he or she is unable to attend, the FIT service coordinator should inform the caseworker of the early intervention supports and services to be provided to the child and family. A copy of the IFSP should be sent to the caseworker if the state has custody or if parents authorize such a release of information. The FIT provider should update the caseworker as the child's developmental information changes and inform the

caseworker of any difficulties in carrying out the IFSP. The FIT service coordinator and the CYFD-PS caseworker should remain in regular contact throughout the child's eligibility for the FIT Program as long as CYFD has the authority to be involved with the child.

If the FIT service coordinator is having difficulty contacting or receiving information from the caseworker, he/she should contact the worker's supervisor or the CYFD county office manager.

Q: Can reports and contact notes made by FIT providers be used in court?

A: Yes. The court can subpoena any and all reports, case notes, and progress/contact notes in the child's record. In addition, the provider may be subpoenaed to testify.

Q: How should FIT providers write reports / contact notes since they can be used in court?

A: Because any and all reports, case notes and progress / contact notes in the child's record can be subpoenaed by the court, it is important that all materials be written clearly and should include factual statements rather than opinions. The exception for this would be the informed clinical opinion of the team regarding the child's eligibility. Families can be informed that in case of a subpoena, the notes may be read in court. Parents should also be informed that the role of the FIT providers is to record information regarding the early intervention supports and services provided. Dates and times should always be recorded and the full name of the staff person who completed the notes / reports must be included.

Q: Would CYFD PS use the results of the FIT provider agency's comprehensive multidisciplinary evaluation or contact notes in the investigation decision?

A: The investigation decision regarding whether to substantiate child abuse/neglect is made based on the allegations in the report. Therefore, a developmental evaluation or contact notes would not typically provide any information that would impact that decision. For example, the allegation may be that the parent has left the child unsupervised for extended period or that the child was physically abused. CYFD-PS looks at "did the event happen". The referral for a developmental evaluation is made under CAPTA to assess the needs of the child. It is common in CYFD-PS practice during an investigation to make referrals to community programs that might be beneficial to the child or family - for example, domestic violence services, parenting classes, counseling, housing, income support. The FIT Program is another resource in promoting the healthy development of the child and in promoting the parenting skills.

Q: What responsibility does EI staff have in reporting any information back to CYFD-PS on what they saw on the home visit?

A: The FIT provider should report to the CYFD-PS on issues related to the development of the child and the ability of the FIT provider to provide effective early intervention supports and services e.g. if the family was not home at the specified time; the family's level of participation; follow through with appointments for the child etc. It not the role of the FIT provider to report on the cleanliness of the home; whether they thought the parent was doing drugs, etc. If the IFSP is addressing issues related to parent-child interactions, it may be appropriate to inform the CYFD-PS of progress made towards outcomes on their IFSP related to these issues. All FIT provider staff are mandated reporters for suspected abuse and neglect and therefore must report any incident on a home visit that warrants such a report.

Q: Does the FIT provider agency have to conduct screenings on all children under the age of three if the household they are living in is being investigated for alleged child abuse or neglect?

A: CAPTA only requires the referral of a child when there is substantiated abuse or neglect. If the substantiation is regarding an older sibling, the CYFD caseworker could still refer the younger sibling who is under the age of three if he or she is concerned about the younger child's development or the impact of the family home environment on the younger child's development. This would NOT be considered a CAPTA referral

Q: Can the court order a family to participate in the FIT Program

A: Yes, the court can mandate the family to participate in FIT Program early intervention supports and services as part of their treatment plan.

Q: What should the FIT provider do if the family refuses to attend / participate in early intervention?

A: If the family does not allow the FIT staff to enter their home or does not attend early intervention at another planned location, the FIT service coordinator should inform the CYFD-PS caseworker. Similarly, if the family makes it very clear that the FIT staff are not welcome in their home and the FIT staff feel uncomfortable about making the home visit the FIT provider staff should inform the CYFD-PS caseworker.

Q: If the abuse / neglect investigation is substantiated but the child is not taken into state custody, how long will a CYFD-PS caseworker be involved with the family?

A: If a court order is not filed, all ongoing involvement with the family is voluntary. Therefore, the family determines the length of time that CYFD remains involved with them. CYFD policies and procedures allow the department to work with a family on a voluntary basis for a 90 day period with a possible 90 day extension.

Q: What family preservation / family support services or other supports and services are available to the biological family through CYFD?

A: For all case types (In-home a.k.a. voluntary services or legal cases) CYFD provides case management services directed at ensuring the safety, permanency and well-being of the child. CYFD is not a direct service provider – that is, CYFD staff does not provide substance abuse treatment or parenting classes but rather seeks to obtain services on behalf of families.

Q: Can a FIT provider be required to testify in court?

A: Yes, the court can subpoena anyone to testify in court. If testifying, the FIT Provider should make factual statements related to the early intervention supports and services provided. Although the FIT provider may be asked to describe their interactions with the parent at the home visit or to describe the parent's behavior during the intervention session, they should not speculate regarding whether the parent could adequately meet the child's development needs. If CYFD is requiring the FIT provider to testify in court, the provider typically meets with the caseworker and children's court attorney to review the nature of the testimony.

Q: Do all children being referred through CAPTA need a full developmental evaluation or can they be screened?

A: The language in the reauthorization of the Individuals with Disabilities Education Act (IDEA 2004) is clear that screening can be conducted for children referred due to substantiated abuse and neglect. However, in New Mexico it is likely that children with substantiated abuse and/or neglect will be eligible under the environmental risk category. It is therefore more time and cost effective to move straight to the comprehensive multidisciplinary evaluation. The evaluation must still be multidisciplinary. The evaluation team may include a developmental specialist who assesses the child's development in all domains with an emphasis on social emotional development and a caseworker / family therapist that utilizes the environmental risk tool* and / or assesses parent-child interaction.

*The Environmental Risk Tool is currently not required. However, it is recommended to use the tool with referrals where the child may be eligible under this environmental risk category, including CAPTA referrals

Q: If the child is in state custody, does the foster parent have the ability to say that the parents cannot receive FIT documents (evaluation report, IFSP, etc.) or participate in the early intervention services? That is, what rights do the parents have while their child is in custody?

A: In addition to the substantive and procedural protections provided in the Children's Code, any parent of a child in the custody of the Department retains all residual rights until and unless modified by court order. This means that while CYFD has the responsibility of making decisions regarding routine health care, living arrangements, etc., the parents still have responsibilities regarding providing support for the child and a right to be informed of and participate in the child's life and decisions impacting the child's life. A parent would no longer have the right to any information concerning his or her child if/when parental rights have been terminated.

Q: What if the foster parent refuses to participate in the FIT Program evaluation, IFSP meeting or early intervention services?

A: The FIT services coordinator should inform the CYFD-PS caseworker immediately of any difficulties in the provision of services. The caseworker can work with the service coordinator and the foster parent to eliminate any barriers so that services can be provided. Foster parents act as agents of CYFD. As part of their licensure requirements and the child's placement agreement, foster parents commit to following CYFD's case plan (which includes early intervention services). If, despite efforts made by the caseworker and the service coordinator, the foster parent is still not cooperating with services, the caseworker would have to bring the matter to the attention of the court and the child's guardian ad litem.