Frequently Asked Questions Related to Oregon's Early Intervention and Early Childhood Special Education Services and COVID-19

September 30, 2021

This document does not provide legal advice, nor should it be construed as legal advice. The responses to the questions received do not establish additional requirements not otherwise imposed by law. The Oregon Department of Education (ODE) encourages districts and parents to consult with their own legal counsel and to consider state and federal guidance and laws when deciding how best to deliver IDEA services for children birth to five.

EI/ECSE holds a unique space between the Early Learning Division's Child Care Provider COVID-19 Requirements and Recommendations and the Oregon Department of Education's Ready Schools, Safe Learners Resiliency Framework for the 2021-22 School Year. Here are updates to the child care rules regarding face covering mandates and vaccination requirements for early learning programs that are not located within a school building.

Recently, a question has surfaced: Are EI/ECSE programs required to complete and submit a Safe Return to InPerson Instruction and Continuity of Services Plan as is required for Districts? To clarify, EI/ECSE programs are not required to complete and submit this plan. That being said, all programs should plan for children and staff to safely return to in-person settings in consideration of the guiding principles used to inform the Safe Return Plan:

- Ensure safety and wellness;
- Center health and well-being;
- Cultivate connection and relationship; ● Prioritize equity; and ● Innovate.

Ultimately, the method of service delivery (virtual, hybrid, or in-person) is the decision of the EI/ECSE program and should be made in collaboration with local health agencies, families, district/ESD leadership, and community partners (e.g., Early Learning HUB, HeadStart/OPK, Preschool Promise, CCR&R, Inclusive Partners, and other community-based organizations).

Additionally, ODE can be a resource and partner in planning. Your region's EI/ECSE county contact is available to help problem-solve and explore possibilities within the law. The county contact can partner with districts and programs to better understand the issue, generate ideas, offer technical assistance, and identify resources to support decision-making.

The following FAQ has been developed to address questions arising due to the unique place within our education system that EI/ECSE is positioned. We acknowledge that a lot of these questions are not easily

answered and that this document will need to be updated as more information becomes available or as the situation changes.

Questions

Face coverings:

1. How do the face covering mandates impact children, families, and staff in EI/ECSE programs?

   Answer: Face coverings are one tool that has been consistently successful in reducing the spread of COVID-19 and is required for adults indoors and outdoors, regardless of vaccination status, and in all places where it would be difficult to practice physical distancing.

   The Oregon Health Authority (OHA) has developed two face covering rules that impact EI/ECSE Programs:

   - Masking Requirements in Schools (OAR 333-019-1015): Applies to children five (5) years of age or older in a K-12 school setting (public, private, parochial, charter or alternative educational program offering kindergarten through grade 12 or any part thereof). Children in preschool classrooms on K-12 school grounds or other settings are not required to wear face coverings. All individuals aged two (2) or older, who are riding a school bus operated by a public or private school, must wear a face covering. Staff, volunteers, contractors, and visitors must wear a mask indoors and also outdoors if individuals cannot or do not consistently maintain at least six feet of distance from others. A school that violates this rule is subject to a civil penalty of $500 per day per violation.

   - Masking Requirements for Indoor and Outdoor Spaces (OAR 333-019-1025): This rule requires staff in EI/ECSE programs to wear masks indoors and also outdoors if individuals cannot or do not consistently maintain at least six feet of distance from others. The rule also specifies that all individuals aged two (2) or older, who are using public transportation, including riding a school bus operated by a public or private school, must wear a face covering.

Home Visiting

2. If EI services are provided in a hybrid model, such as visits in a center and visits through virtual coaching with the child and family in the home, can the federal code remain 19 (home) rather than 18 (other) even though the "home visit" is virtual?

   Answer: In this situation we have to look at where the majority of the services were provided.

   - If the child is attending neither a community early childhood program nor a special education program and receiving the majority of hours of special education and related services **at home**, then it will be 19 (Home). This would be the same whether these services were provided via DSL, hybrid or in-person.
   - If the child is attending neither a regular early childhood program nor a special education program and receiving the majority of hours of special education and related

services **at the service provider's location or some other location not in any other category** then it would be 13 (service provider location or 19 (other setting) respectively.

3. If programs have staff who are providing visits in the home, should they get consent prior to the visit?

   Answer: Yes. Inform families of the risks of COVID-19 transmission and obtain family consent prior to an in-person visit taking place. Consent does not have to be provided in writing but should be documented in meeting minutes or in the contact log on EcWeb.

4. How/when do we determine it is safe to resume in-person home visiting?

   Answer: Some families and home visitors are ready to resume in-person services, while others are not. Ultimately, the method of visitation is a decision of the individual program, in collaboration with the family.

   It is recommended that EI/ECSE programs:

   - Prioritize health and safety for home visitors and families when planning for in-person home visits, especially understanding the toll that COVID-19 has taken on communities of color and Tribal communities across Oregon.
   - Establish policies and procedures for in-person services that address the priority considerations (outlined in the section below) prior to conducting in-person home visits.
   - Continue to offer remote or telehealth home visiting services as an option during the early transition phase as restrictions are lifted or shifting.

   Priority considerations for in-person home visiting services:

   - **Equity Impact:** Communities of color and Tribal communities, specifically Latino/a/x, Black/African American, Pacific Islander and American Indian/Alaska Native populations have been disproportionately impacted by COVID-19. Consider and assess how returning to in-home services will address inequities that staff and families experience. For example, agencies may want to identify and prioritize families and populations who experienced inequitable access to technology required for remote or telehealth home visiting services.
   - **Family Voice:** Honor family decisions on the type of visit (telehealth or in-person) that feels most comfortable to them. Individual circumstances and perceptions of the risk of the pandemic vary and may impact a family's comfort level with in-person contact. A family's vaccination status should not be used to limit access to home visiting services. Inform families of the risks of COVID-19 transmission and obtain family consent prior to an in-person home visit taking place.
   - **Vaccination:** It is strongly recommended, when possible, that a home visitor be fully vaccinated prior to reinstating in-person visits.

- Vaccination is a safe, effective and reliable way to prevent getting sick from COVID-19. It's the best tool we have to help us manage the COVID-19 pandemic in Oregon. Home visitors can support access to vaccination for eligible family members.
- Agencies should develop and follow their own policies on employee vaccinations. For the purposes of this guidance, people are considered fully vaccinated for COVID-19 two weeks after they have received the second dose in a two-dose series (PfizerBioNTech or Moderna), or two weeks after they have received a single-dose vaccine (Johnson and Johnson [J&J]/Janssen).

- Home visitors should continue to wear masks, maintain physical distance, and practice other prevention measures when providing in-person visiting services, regardless of home visitor or family member vaccination status.

Resources:

COVID-19 Public Health Recommendations for Maternal/Child Home Visitation

OSEP Dear Colleague Letter 21-01

Individualized COVID-19 Recovery Services

5. What are the expectations around provision of Individualized COVID-19 Recovery Services for our students ages 3-5?

Answer: Oregon is a unique state where EI/ECSE services are delivered seamlessly and children and families remain on an IFSP until kindergarten transition. In most states, students transition from IFSPs to IEPs at three years old when they transition from Early Intervention to Early Childhood Special Education. In Oregon, for children ages 3-5, the IFSP serves the same function as the IEP. Each LEA assures that they recognize the IFSP as equivalent to an IEP for this group of children. As such, while IFSPs are not mentioned in ODE's Planning for Individualized COVID19 Recovery Services, the guidance pertains to IFSPs for children ages 3-5 and their families.

Children ages three to five, on Individual Family Service Plans (IFSPs), should be included in recovery service planning as a free appropriate public education (FAPE) must be made available for children experiencing disabilities beginning at the age of three. In many cases, services and support offered in the 2020-21 school year will have been sufficient to meet the child's individual needs; however, there will be instances where additional services are needed to address the impacts of COVID-19 on an individual child. As is typical within the IFSP process, parent information and concerns must be considered and teams should seek parental input related to whether and how much service time is needed and how the services will be delivered. Please do not hesitate to reach out to your county contact if you have further questions about planning for Individualized COVID-19 Recovery Services.

6. Can you clarify the process for determining the need for Individualized COVID-19 Recovery Services? How is this reported on the IFSP, etc.? Will there be a form added to EC web similar to the Individualized COVID-19 Recovery Services Review Form?

   Answer: There is no single specific method for determining whether and what Individualized COVID-19 Recovery Services are needed. This determination will be based on the individual needs of the child. IFSP teams serving children 3-5 are determining if the services delivered in the past year indicate that the child did not make as much progress as they would have if their services were delivered typically. This decision will be reliant on the data and the team's professional judgment. If the child has been in the program long enough, past progress with typical services can be compared to progress during COVID-19 as one possibility.

   - IFSP Teams can hold an IFSP meeting at any time prior to the end of the 2022-23 School year to consider the need for Individualized COVID-19 Recovery Services.
   - Determination can be made earlier if requested by parents or determined necessary by any member of the team.
   - Individualized COVID-19 Recovery Services should be noted on the IFSP. This can be done by selecting, on the cover page in ecWeb, the 'Recovery Service' checkbox next to the relevant service.
   - Use the meeting minutes and prior notice of action to document the need for recovery services.
   - Please see Planning for Individualized COVID-19 Recovery Services, including Reaching an agreement on the Need for Individualized COVID-19 Recovery Services, for additional guidance.

7. What is the difference between Individualized COVID-19 Recovery Services and increases in service due to Adequate Service Level (ASL) and Student Success Act (SSA) funding?

   Answer: These decisions are made separately and for separate reasons. Individualized COVID19 Recovery Services are designed to support an individual child's lack of progress that may be attributed to the change in services/service delivery required by the response to the pandemic.
   SSA funding determinations are made according to goals and objectives set in program Adequate Service Level and Child Outcomes Plans. The additional staff time and services, funded by SSA, are permanent increases.

FAPE during Closures and Quarantine

8. Should we do Comprehensive Distance Learning plans (CDLPs) proactively for our students in case there is a need to return to distance learning?

Answer:

- Locally published and submitted plan for operations, communicable disease plan*, isolation space*, recovery services process, quarantine/isolation protocols, exclusion for exposed individuals*, indoor face masks, Division 22 rules*, are all requirements. All other decisions are local. ODE and OHA strongly recommend multiple, layered mitigation protocols to limit the spread, protect health, and maintain continuity of inperson instruction. ** Required prior to COVID-19.*
- Under the Resiliency Framework, districts/schools must also submit a communicable disease management plan. We "*strongly advise* that [plan contain] Response to Outbreak protocols includ[ing] the . . . means by which school will ensure continuous education services for students and supports for staff" (Resiliency Framework, p. 23). Districts and Programs could choose to provide CDLPs for students, but are not required to do so.

9. Should we continue to have a comprehensive distance learning plan on IFSPs in the event of another shut down?

   Answer: Programs could choose to provide CDLPs for students, but are not required to do so. If, however, services shift due to COVID-19, a new plan must be developed.

10. Should we have a CDLP if a child has to quarantine for 10 days? If so, will there be any additional regulations for writing services on the cover sheet or will we continue to create CDLP's as an addendum to the IFSP?

    Answer:

    - This decision would be made in partnership with the family. If a child has to quarantine due to COVID-19 exposure, but does not have COVID-19, it may be possible to provide virtual services. If the child does have COVID-19, the program should respond the same way that they would for other prolonged illnesses.
    - It is critical to document the discussion and decisions in a way that makes sense for the program and the family. This can be done in the contact log, in meeting minutes, or in a prior written notice. Please refer to the processes and policies for documentation that you have used in the past.

Enrollment

11. What guidelines are we using around active enrollment and the closure of student files? Are there any changes to communication requirements or the amount of time student files must be left open?

    Answer: If the child is no longer receiving services, and has not been for some time, then the child should be exited from special education. If the child has intermittent or poor attendance

as a result of COVID-19, then the child should not be reported as exiting special education unless the child/family leaves or no longer wants services (e.g., until in-person resumes). In that case, the family has exited special education.

12. Will families be able to opt in and out of services this year, without fear of being made inactive?

    Answer: There are no changes to this process due to COVID-19 (see above). You would proceed as you have done before COVID-19.

Parent Signatures and Virtual IFSP/Evaluation Meetings

13. When holding virtual meetings, is collecting parent signature/consent for meeting via email (and then sending the hard copy forms for parents to sign and return) a verified method for obtaining parent authorization (provisional consent)?

    Answer: Programs can continue to use the Parent Portal for Electronic Signatures.

    Hard copies should be dated with the date signed. You may wish to make note in meeting minutes that the parent agreed/consented at the time of the meeting and returned hard copies at a later date. Electronic signatures are allowed by FERPA provided certain conditions are met (see below). The FERPA regulations regarding electronic signatures can be found at 34 CFR § 99.3(d). That statute is referenced in the IDEA regulation pertaining to the requirements for parent consent/written notification (34 CFR § 300.154). The statutes do not make reference to the platform to be utilized to obtain consent; that decision is up to local policy and security protocols. Signed and dated written consent under this part may include a record and signature in electronic form that:

    1. Identifies and authenticates a particular person as the source of the electronic consent; and
    2. Indicates such person's approval of the information contained in the electronic consent.

    See FERPA Considerations and Distance Learning for All for more information.

Oregon COVID-19 Policies

14. What health privacy measures should we consider as we move forward to support services?

    Answer: ODE cannot make individual staffing determinations and requirements at this time for EI/ECSE programs. These determinations are made at the local level.

    Vaccines, in combination with other health and safety measures, are known to be a highly effective tool to reduce the spread and severity of COVID-19. In a letter on August 30, 2021, Director Colt Gill recommended that EI/ECSE staff be vaccinated for the following reasons:

- The population that the EI/ECSE programs serve include some of the most medically vulnerable/fragile children in this age group and require the highest level of health caution. Children receiving EI/ECSE services are also not required to wear face coverings, unlike K-12 students.
- Many EI/ECSE staff are assigned to serve new children and families throughout the school year. Some of these children are placed in preschool/pre-kindergarten and childcare settings that are physically located in K-12 school settings where the vaccination requirement is in place. Staff may unexpectedly be assigned to this physical location and we do not want a delay in services due to vaccination status.
- Some EI/ECSE staff are itinerant and work across early learning and K-12 settings.
- Some EI/ECSE staff perform home visits and vaccination will protect your staff and prevent staff quarantines that could disrupt services to children and families.
- Some EI/ECSE staff interact with many other staff in early learning, K-12, ESD, and university settings and vaccination will protect your staff and prevent staff quarantines that could disrupt services to children and families.
- EI/ECSE service providers must remain flexible and may need to reassign staff based on the service needs of children and families. Universal vaccination will create more flexibility in staff assignments.

15. Is there guidance for EI/ECSE programs and staff to handle situations such as community preschool teachers not wearing masks?

Answer: The Early Learning Division (ELD) and Oregon Health Authority (OHA) published an updated version of Child Care Provider COVID-19 Requirements and Recommendations with the latest health and safety practices for early care and education (ECE) programs. Indoors, all adults in the facility must wear a face covering. See Provider Update Sept. 7, 2021 for additional information.

ODE recommends collaboration with the early learning partners in your area (e.g., Early Learning HUB, Head Start/OPK, Preschool Promise, CCR&R, Inclusive Partners, other community based organizations) and individual child care providers to ensure that services for children and families are delivered in an aligned approach.