



Child Abuse Prevention & Treatment Act (CAPTA) Referrals to the Family Infant Toddler (FIT) Program

Frequently Asked Questions (FAQs)

Legal Issues regarding who can sign for what?

Q.1: Who can sign consent the initial evaluation and for early intervention services on the IFSP?

- When the child remains in the legal custody of his/her parent/guardian, the parent/guardian signs consent for the initial evaluation and ongoing early intervention services.
- When a child is in the legal custody of the state the parent/guardian can still sign consent, unless the treatment plan states that the child will not to be reunified with the biological parent(s) and / or termination of parental rights is being pursued through the court.
- If the parent/guardian is not available or refuses to sign consent, the foster parent may act in the role of parent and sign consent.
- Finally, a surrogate parent can be appointed to act in the role of parent if foster parent is unable or unwilling to sign consent (e.g. if the child has just been placed with them or is just about to be placed in another foster home).

Q.2: If a child is in State custody, can a CYFD case worker sign all intake paperwork, consent for an evaluation and an IFSP for a child?

- The Individuals with Disabilities Education Act (IDEA) states that the person functioning in the role of the parent in order to sign consent cannot be "the State if the child is a ward of the State". Therefore, the CYFD case worker cannot sign consent for the initial evaluation or to begin IFSP services.
- The CYFD case worker is encouraged to sign the IFSP as member of the team.

Q.3: What is the difference between legal guardianship, legal custody, and temporary custody?

- “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 custody” 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 working days. If the state determines that continuing custody is necessary to protect the child, the state must file a petition with the courts.

Q.4: Who signs for medical releases that are subject to HIPAA regulations?

- If the state has custody and is the legal guardian, the Child Protective Services (CPS) 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.

Q.5: When does a surrogate parent need to be appointed?

- A surrogate parent shall only be assigned if the child is in the custody of the state or tribe and both the parent(s) /guardian(s) or foster parent(s) are unable or unwilling to act as the parent in the IFSP process.
- The FIT service coordinator shall notify the Department of Health – FIT Program if as a surrogate parent(s) needs to be appointed.

Q.6: Can the court order a family to participate in the FIT Program?

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

Q.7: If the abuse / neglect investigation is substantiated but the child is not taken into state custody, how long will a CPS caseworker be involved with the family?

- If a court order is not filed, all ongoing involvement with the family is voluntary.

- 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.
- Not all substantiated cases are opened to CYFD - CPS for voluntary services

Q.8: Can a FIT provider be required to testify in court?

- Yes, the court can subpoena anyone to testify in court.
- The FIT Provider should make factual statements related to the early intervention supports and services provided if testifying in court.
- If CYFD is requiring the FIT provider to testify in court, the provider typically will meet with the caseworker and children's court attorney to review the nature of the testimony.

Responsibility with Regards to Service Provision

Q.9: 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?

- The child's parents/guardian is 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 - CPS 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 a child is reunified with the parent and custody returned to the parent, the parent's consent would be required for continuing services. (note: sometimes even where custody is returned to the parent, the case will remain under the jurisdiction of the court and services ordered after the custody)
- If however, parental rights are terminated, the parent may no longer be involved in the provision of services.

Q.10: 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?

- In most cases the foster family and the child's family know each other and work collaboratively to promote the best interest of the child.

- CYFD seeks to place children with relatives or in the child's community as often as possible.
- In a situation where the foster family is not disclosed to the biological parent(s) the FIT service coordinators develop initial IFSP with the biological parents and then reviewed with the foster parents, with any additional strategies and services added at that time.

Q.11: What is the role of the FIT provider agency when the parent(s) visit their child at the foster home or other location?

- Visitation is the time that the court has decided that the parent(s) shall spend with the child weekly/monthly, and 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.
- If a FIT provider has concerns about the behavior or conduct of the parent during early intervention sessions they should call the CYFD-CPS case worker who can work to restructure the process.

Q.12: What is the role of the CYFD case worker in visitation?

- The court order determines the parent's involvement with services and conditions of visitation.
- 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 can supervise visits.

Q.13: 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?

- 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 CPS caseworker immediately and explain situation.
- There may be times a visit has to take place in a neutral safe environment.
- Both FIT staff and CYFD CPS 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.14: Do all children being referred through CAPTA need a full developmental evaluation or can they be screened?

- In New Mexico it is likely that children with substantiated abuse and/or neglect will be eligible under the environmental risk category. It is more cost effective to move straight to the comprehensive multidisciplinary evaluation rather than screen first. The evaluation must still be multidisciplinary including assessment in all 5 developmental domains.

Q.15: What if the foster parent refuses to participate in the FIT Program evaluation, IFSP meeting or early intervention services?

- The FIT services coordinator should inform the CYFD-CPS 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.
- If, despite efforts made by the caseworker and the service coordinator, the foster parent(s) were 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.

Q.16: Can an early intervention provider refuse a referral from CPS?

- No. Early Intervention providers must accept all referrals.
- The CAPTA Referral form is the only form required from CPS to start the Intake process.
- Additional information can be provided by CPS, however it is not required.

Documentation Requirement

Q.17: Where do FIT provider agencies send a copy of the evaluation report and the IFSP?

- Copies of the evaluation report and IFSP should be sent to the biological parents, foster family and the CYFD CPS case worker as members of the IFSP team.

Q.18: Can reports and contact notes made by FIT providers be used in court?

- Yes. The court can subpoena any and all reports, case notes, and progress/contact notes in the child's record.
- It is therefore important that notes be clear, factual and objective

Q.19: What should the FIT provider do if the CPS caseworker wants a copy of all documents, including case notes, contract notes and / or progress reports?

- For a child in the custody of CYFD, the caseworker would typically require the results of any evaluations conducted and progress notes. The worker may also ask the provider to submit information regarding parental participation in the services, if the court has ordered it.
- CYFD is allowed to obtain 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.
- 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. (Non-Substantiated Referral.)

Q.20: How should FIT providers write reports / contact notes since they can be used in 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 and not the 'judge' the parent(s).
- Dates and times should always be recorded and the full name of the staff person who completed the notes / reports must be included.

Q.21: Would CPS use the results of the FIT provider agency's comprehensive multidisciplinary evaluation or contact notes in the investigation decision?

- A developmental evaluation or contact notes would not typically provide any information that would impact an investigation decision.
- The referral for a developmental evaluation is made under CAPTA to assess the needs of the child.

Q.22: 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?

- No, The foster parent cannot determine what documents the biological parent(s) receive and do not receive.

Q.23: Do FIT Providers have to attend Child Abuse and Neglect – Citizens Review Board (CRB) meetings?

- No. FIT providers may be invited, however they are not required to attend the CRB
- It is recommended that FIT Providers submit to the child's case worker the Family Court / CRB reporting form at least quarterly. This informs the CRB and the court of the child's progress and ongoing needs, as well as the engagement of the biological parents in the early intervention sessions.

On-Going Communication

Q.24: How can the FIT provider and CYFD Case workers promote good communication with each other?

- The FIT service coordinator should give feedback to the CPS caseworker regarding the referral and should inform the caseworker of the results of the developmental evaluation.
- The CPS caseworker should be invited to the IFSP meeting.
- If the CPS case worker is unable to attend, due to scheduling, the FIT service coordinator should inform them 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 informs the caseworker of any difficulties in carrying out the IFSP.
- The FIT service coordinator and the CPS 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.
- The CYFD case worker should inform the FIT service coordinator if there is a change in case workers assigned.
- If the FIT service coordinator is having difficulty contacting or receiving information from the caseworker, he/she should contact the CPS worker's supervisor or the CYFD county office manager.

Q.24: What responsibility does EI staff have in reporting any information back to CPS on what they saw on the home visit?

- The FIT provider should report to the CPS case worker on issues related to the development of the child and the success of the FIT provider in providing effective early intervention supports and services through the CRB / Family Court reporting form.
- 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.25: 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 screening using the Ages and Stages Questionnaire or other tool should be completed on all children under 3 in the household.
- Also, the CYFD caseworker could refer a sibling who is under the age of three if he or she is concerned about the child's development or the impact of the family home environment. In this case an Comprehensive Multidisciplinary Evaluation would be conducted based on the referral.

Q.26: What should the FIT provider do if the family refuses to attend and/or participate in early intervention?

- 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 needs to inform the CYFD - CPS caseworker.

CPS Family Support Services

Q.27: What family support services or other supports and services are available to the biological family through CYFD?

- CYFD may provide case management services, information and referral, and In-Home Services directed at ensuring the safety, permanency and well being of the child.
- CYFD contracts with community providers to provide services may include; substance abuse treatment, parenting classes, domestic violence, etc., to all individuals in the family.