STATE OF SOUTH CAROLINA
DEPARTMENT OF EDUCATION

MOLLY M. SPEARMAN
STATE SUPERINTENDENT OF EDUCATION

MEMORANDUM

TO: District Superintendents

FROM: John R. Payne, Director
Office of Special Education Services

DATE: August 31, 2016

RE: Adult Students with Disabilities Educational Rights Consent Act

This memorandum is to notify local educational agencies (LEAs) and state-operated programs (SOPs) of the Adult Students with Disabilities Educational Rights Consent Act (Consent Act), which was enacted in South Carolina in June 2016. The new law provides additional options to exercise and assign educational rights for adult students with disabilities. The options now include:

1. Student makes educational decisions (automatically occurs at the age of majority–eighteen years old);
2. Student makes educational decisions with support and assistance of an adult of his or her choice (informal arrangement);
3. Student delegates educational rights to an agent (using a delegation form or power of attorney);
4. A representative is appointed to represent the educational interests of an adult student while he or she is in school (using certification process that involves a medical professional); and
5. Educational rights, along with other rights, are assigned to a court-appointed guardian (using Probate Court process).

Protection and Advocacy for People with Disabilities, Inc., has developed a Fact Sheet to help explain the Consent Act and the options that are available to adult students and parents in regard to educational rights. A copy of the Fact Sheet is included with this memorandum and is available at http://www.pandasc.org/wp-content/uploads/2016/07/Adult-Students-with-Disabilities-Educational-Rights-Consent-Act-6-16.pdf.

We recommend that all staff and educators at your LEA or SOP who work with adult students review this memorandum and the Fact Sheet; and become familiar with the available options on how to assist parents and students. Staff may also review the full text of the Consent Act (South Carolina Code of Laws §§ 59-33-310 to 59-33-370).

Pursuant to the requirements of the Consent Act, the South Carolina Department of Education has developed a "delegation of rights" form that can be used by students to appoint an agent for making educational decisions (option 3). Students may also use a power of attorney to delegate educational rights. The delegation of rights form will be incorporated into the South Carolina Enrich IEP system as an "add action." Until the form is available in the Enrich IEP system, LEAs and SOPs may use the Word form template that is included with this memorandum.

All LEAs and SOPs who serve adult students should be familiar with the Consent Act, and should be able to assist students and parents in obtaining additional information about their options. In addition, LEAs and SOPs should accept and process properly executed certification letters for option 4. When an LEA or SOP receives a certification letter, the LEA or SOP is required to notify the student in writing that a medical professional has certified that he or she is incapable of communicating and an educational representative will be designated to represent him or her. The notice must inform the student that he or she may challenge the designation of the educational representative. If the student challenges the certification of an educational representative, then the school district may not rely upon the educational representative for any decision-making purpose.

Should you have questions about the Consent Act or LEA or SOP responsibilities relating to the educational rights of adult students with disabilities, you may contact Meg Hazel at mhazel@ed.sc.gov, 803-734-2746, or Barbara Drayton at bdrayton@ed.sc.gov, 803-734-8783.

cc: District Special Education Directors and Coordinators