

**MEMORANDUM OF AGREEMENT BETWEEN
SOUTH CAROLINA FIRST STEPS TO SCHOOL READINESS/BABYNET
AND THE SOUTH CAROLINA DEPARTMENT OF EDUCATION**

I. PURPOSE

This Memorandum of Agreement (MOA) is made by and between the South Carolina First Steps to School Readiness/BabyNet (SC First Steps/BabyNet), the lead agency responsible for South Carolina's Part C system of services for eligible infants and toddlers, ages birth to 3 years, and their families served by the state's Individuals with Disabilities Education Act (IDEA) early intervention program (BabyNet), and the South Carolina Department of Education (SCDE), Office of Special Education Services (OSSES), with supervision over programs and services for eligible preschool children, ages 3 years through 5 years, served under the IDEA.

SC First Steps/BabyNet, under Part C of the IDEA, and the SCDE and local education agency (LEA), under part B of the IDEA, have a statutory responsibility to ensure a smooth transition for each child and family and, under the IDEA's child find provisions, to ensure the identification, location, and evaluation of each child eligible for services under Parts B and C of the IDEA, including children with disabilities attending private schools and highly mobile children with disabilities (such as migrant and homeless children).

The purpose of this agreement is to meet the requirements of 34 CFR §303.209(a)(3)(i) of the final IDEA Part C regulations published on September 28, 2011, that the State lead agency must have on file with the (*U.S. Department of Education*) **Office of Special Education Programs (OSEP)** as part of its IDEA Part C application transition policies and procedures, an interagency agreement on transition with the state education agency (SEA) that administers section 619 of the Act.

The goals of the MOA are

- to define the responsibilities of the agencies for ensuring a smooth transition from Part C to Part B programs in accordance with the IDEA;
- to define mutual child find responsibilities;
- to ensure the timely exchange of information consistent with the Family Educational Rights and Privacy Act (FERPA) among state and local BabyNet Coordination Teams and the SCDE for planning and reporting purposes (see Appendix A: SCDE's, OSSES, Special Education Process Guide for South Carolina: Chapter 11: Confidentiality and Appendix B: BabyNet Confidentiality Policy);
- to pursue state-level issues associated with transition, as needed;
- to ensure procedures that enable accurate and unduplicated counts can be supplied to the U.S. Office of Special Education Programs, as required; and
- to facilitate the development of interagency agreements between local SC First Steps/BabyNet teams and local school districts.

II. TRANSITION PROCESS

A. TRANSITION PLANNING

The lead agency, with the participation of the family, must establish a comprehensive transition plan in the **Individualized Family Service Plan (IFSP)** not fewer than 90 days, or at the discretion of all parties, as early as 9 months prior to the child's third birthday. The transition plan must include steps for the toddler with a disability and his or her family to exit from the Part C program and must include

any transition services that the IFSP team identifies as needed by that toddler and his or her family. Any transition planning meeting must include the following participants:

- the parent or parents of the child;
- other family members as requested by the parent, if feasible to do so;
- an advocate or person outside the family, if the parent requests that person to participate;
- SC First Steps/BabyNet (service coordinator);
- a person or persons directly involved in conducting the evaluations and assessments, as appropriate; and
- persons who will be providing services to the child or family.

If any of these participants are unable to attend the meeting, arrangements must be made for the person's involvement through other means including conference call, having a knowledgeable authorized representative attend the meeting, or making pertinent records available at the meeting. The meetings must be conducted in settings and at times that are convenient to families, in the native language of the family or other mode of communication used by the family, unless it is clearly not feasible to do so. Meeting arrangements must be made and written prior notice provided to the family and other participants early enough before the meeting date to ensure they will be able to attend. Parental consent must be obtained prior to the meeting.

The purpose of the meeting is to

- review the child's program options for the period from the child's third birthday through the remainder of the school year; and
- establish a transition plan, including, as appropriate, steps to exit from the program.

With parental permission and to ensure continuity of services, a referral will be made to the LEA, and information/records about the child will be sent to the LEA prior to the child turning 2 years, 6 months using the Transition Referral Form with Section 2 completed. The information/records sent will include evaluation and assessment information and IFSPs.

Confirmation that child find information has been transmitted to the LEA or other relevant agency, and with required parental consent, must be recorded on the IFSP Section 12—Transition Planning page. Transmission of additional information needed by the LEA to ensure continuity of services from the Part C program to the Part B program, including a copy of the most recent evaluation and assessments of the child and family and most recent IFSP must be recorded on the IFSP Section 12—Transition Planning page.

B. TRANSITION NOTIFICATIONS

Child Find. FERPA allows referral for Child Find purposes without prior parental consent. This directory information includes

- child's name,
- date of birth, and
- parent contact information (including parents' names, addresses, and telephone numbers).

Part C Requirements and Responsibilities

Transition notification. Transition notification applies to all children who are receiving Part C services. The transmission of directory information for all children receiving Part C services who will **shortly be reaching the age of Part B eligibility** is made by the BabyNet State Office to the SCDE and appropriate LEA. Notification is sent to the SCDE and appropriate LEA—24 Month Report, Over 24 Month Report, 30 Month Report, Over 30 Month Report, Over 33 Months Report, and Over 34.5 Month Report. If no children in a school district qualify for notification, a “Zero Report” is made (which notifies the SCDE and LEA that there are no children to report in the specific month range).

Transition referral. Notification of children **potentially eligible for Part B services** (the transmission of directory information) is sent to the appropriate LEA (for the area in which the child resides) by the service coordinators after age 24 months (2 years) and no later than age 30 months (2.5 years) using the BabyNet Transition Referral Form. If a child is determined eligible for Part C services more than 45 but less than 90 days prior to the third birthday, an immediate referral will be sent to the LEA. If a child is referred fewer than 45 days before the child’s third birthday (34.5 months; 2 years 10 months of age), an evaluation and assessment or initial IFSP is not required. If that child is “potentially eligible for preschool services” and the parent consents, the child must be referred to the LEA and SCDE.

Parents requesting a **referral** to the LEA will provide written consent on the Transition Referral Form. Parents must consent for any additional information to be provided to the LEA. For parents not wishing to make a referral, the Transition Referral Form will so indicate; only the directory information will be sent.

Part B Requirements and Responsibilities

Transition notification. If notification reports appear to have children assigned to the incorrect school district, LEA personnel will reply to the notification e-mail and specify which children are questionable. Part C personnel will follow up to verify and make the corrections.

Contact information updates. Updated contact information for e-mail notification needs to be submitted by the LEAs to the staff person designated by the OSES Director to monitor changes on an ongoing basis. The name of the OSES’s designee will be forwarded by the OSES to the Part C data manager. Once updated, LEA contact information will be sent to the Part C data manager in order to generate and disseminate monthly reports.

C. TRANSITION CONFERENCE

The SC First Steps/BabyNet Coordinator will notify the LEA for the area in which a child resides that the child will shortly reach the age of eligibility for preschool services under Part B, as determined in accordance with State law. In the case of a child who may be eligible for such preschool services, with the approval of the family, convene a conference among the lead agency, the family, and the LEA not less than 90 days (and at the discretion of all such parties, not more than 9 months) before the child is eligible for the preschool services, to discuss any such services that the child may receive. In the case of a child who may not be eligible for such preschool services, with the approval of the family, **the SC First Steps/BabyNet Coordinator** makes reasonable efforts to convene a conference among the lead agency, the family, and providers of other appropriate services for children who are not eligible for preschool services under Part B to discuss the appropriate services that the child may receive.

Part C Requirements and Responsibilities

SC First Steps/BabyNet must conduct the transition conference and use that meeting to develop or revise the transition plan in the IFSP (including identifying appropriate transition steps and services). **The SC First Steps/BabyNet Coordinator** is responsible for scheduling and facilitating the transition conference. This requires the approval of the family. It will be held at a time and place mutually agreed upon by all parties. The transition conferences may be completed face-to-face, by telephone, or through the use of other technology.

The “transition conference” includes transmission of relevant information for all children receiving IDEA Part C to the IDEA Part B agency, which then assists the family in identification and planning for services while informing families of available Part B services.

A transition conference is required for all children enrolled in BabyNet who are potentially eligible for Part B services between birth and 33 months of age (90 days prior to the third birthday). The conference must occur by age 33 months (2 years, 9 months) but may occur as early as 27 months (2 years, 3 months) at the discretion of all parties.

Participants. Required transition conference participation includes a SC First Steps/BabyNet representative, child’s parent(s), an LEA representative, and others at the discretion of the previously identified participants.

Activities at the Transition Conference

Parents may bring any preliminary information they wish to share at this time. All medical records, evaluations, and the IFSP may be reviewed.

If LEA Does Not Participate in the Conference

If the LEA does not participate in the conference, the Part C lead agency must still hold a transition conference at least 90 days (and at the discretion of all parties, nine months) prior to the child’s third birthday and must have invited the LEA representative to the conference.

- The lead agency must conduct the transition conference under IDEA section 637(a)(9)(A)(ii)(II) and (III) and use that meeting to develop or revise the transition plan in the IFSP (including identifying appropriate transition steps and services).
- In addition, the lead agency must provide parents at the conference with information about Part B preschool services, consistent with IDEA section 635(a)(6).
- This information includes a description of the Part B eligibility definitions, State timelines, and process for consenting to an evaluation and conducting eligibility determinations under Part B, and the availability of special education and related services.

Part B Requirements and Responsibilities

Each affected LEA must participate in transition conferences arranged by the lead agency for toddlers with disabilities who are potentially eligible for preschool services under Part B.

Activities at the Transition Conference

The LEA representative

- provides information to parents about Part B preschool services;
- describes the Part B program for preschool children with disabilities;
- describes processes that will occur during the next six months, a description of the eligibility definitions, and the determination process;

- describes state timelines and process for consenting to an evaluation and conducting eligibility determinations under Part B and describes the availability of special education and related services;
- describes additional evaluations or screening which will be necessary in order to determine eligibility and/or identifies information still needed by the LEA;
- provides parents with a copy of their due process rights and procedural safeguards for Part B;
- obtains parent signature on necessary forms (if not yet done); and
- plans for next meeting (evaluation, multidisciplinary team staffing, or IEP) with parent input.

D. ELIGIBILITY DETERMINATION

Part B Requirements and Responsibilities

If the child is determined eligible for Part B services under the IDEA

- Develop and implement the IEP or, if consistent with IDEA, an IFSP by third birthday for a child who received Part C services and is determined eligible under Part B.
- Invite the Part C service coordinator or other service representative to the initial IEP team meeting if the child previously received Part C services.
- If an IFSP is used in place of an IEP, ensure the IFSP is consistent with the requirements for an IEP and parents agree in writing to use the IFSP.
- If an IFSP is used in place of an IEP, explain the difference between the two to the parents.

Children turning age three during the summer. If a child's third birthday occurs during the summer, the child's IEP team shall determine the date when services under the IEP or IFSP will begin. However, if the IEP team determines that there is a need for extended school year (ESY) services, these services will be provided before the beginning of the school year. IEP teams must make determinations on an individual basis. Services may not be limited to particular categories of disabilities. There cannot be a unilateral limit to the type, amount, or duration of ESY services.

Placement. In determining the educational placement of a child with a disability, including a preschool child with a disability, each LEA must ensure that the placement decision

- is made by a group of persons, including the parents, and other persons knowledgeable about the child, the meaning of the evaluation data, and the placement options;
- is determined at least annually;
- is based on the child's IEP;
- is as close as possible to the child's home;*takes into consideration any potential harmful effect on the child or on the quality of services that he or she needs; and
- does not result in a child with a disability being removed from education in age-appropriate regular classrooms solely because of needed modifications in the general education curriculum.

*Unless the IEP of a child with a disability requires some other arrangement, the child is educated in the school that he or she would attend if nondisabled.

If the child is determined not eligible for Part B services under the IDEA

- Discuss results of evaluations.
- Explain why child did not meet eligibility criteria and qualify for special education and related services through the LEA under IDEA, Part B.

- Discuss the positive aspects of ineligibility under IDEA, Part B with families of children who will transition to other community-based programs. Emphasize that if a concern arises at a later date, referral to the LEA is an ongoing option. Ineligibility for IDEA, Part B services (special education and related services) at the time of initial referral to the LEA does not preclude eligibility at a later age. Provide contact information.
- Explain parents' right to appeal eligibility determination (see Parent Handbook to Special Education).

Part C Requirements and Responsibilities

The SC First Steps/BabyNet Coordinator may choose to participate in initial IEP meeting if the family has specifically requested his or her presence.

III. FERPA REQUIREMENTS

All the information to be disclosed in this agreement is covered under the FERPA (see appendix A and B). The organizations agree

- to use the personally identifiable information from education records only to meet the purposes of the written agreement;
- to not permit the release of personally identifiable information on the parents or students to anyone other than the representatives of the organization with legitimate interests;
- to only allow access of personally identifiable information from educational records to those persons with a need to know; and
- to destroy personally identifiable information from educational records in compliance with the FERPA regulations when the information is no longer needed for the purposes for which the information was shared.

IV. RESOLUTION OF DISPUTES

Timely resolution of interagency disputes: Representatives of SC First Steps/BabyNet and the SCDE, OSES will work to ensure that services are provided to eligible children and their families in a timely manner pending the resolution of disputes related to the transition process. State agency representatives will communicate updates and concerns about the transition process through state-level interagency team meetings, will provide other regularly scheduled opportunities for feedback, and will keep the lines of communication open to problem-solve and reach a solution as quickly and efficiently as possible or to discuss a next level of resolution.

V. IMPLEMENTATION OF AGREEMENT

SC First Steps/BabyNet and the SCDE, OSES will disseminate this agreement to their respective Part C early intervention and Part B preschool special education programs. They will jointly and independently provide ongoing training in the implementation of the agreement as well as early childhood transition processes, procedures, and data collection.

VI. REVIEW OF AGREEMENT

This MOA will be reviewed annually and renewed prior to June 30 of each calendar year. When there are recommendations for changes to the agreement, state office personnel for either agency can request a review, which will be initiated within 30 days of the request with follow up to be completed within 6 months of the request.

The MOA will be signed by the Superintendent of the South Carolina Department of Education as the Part B representative and by the South Carolina First Steps to School Readiness Executive Director as the Part C representative.

NOW THEREFORE, the agencies agree to all of the sections of this MOA and its appendices:

AGENCY REPRESENTATIVE

Date

Susan Dr. DeVenny

6/11/14

Susan DeVenny
State Director
South Carolina First Steps to School Readiness/BabyNet

Mick Zais

6/4/14

Mick Zais, Ph.D.
State Superintendent
South Carolina Department of Education

Revised March 2013

The Office of Special Education Services

Special Education Process Guide for South Carolina

Revised 03/20/13

Revised March 2013

The purpose of this document is to provide comprehensive information on State Board of Education regulation 43-243. This guidance provides the South Carolina Department of Education's interpretation of various statutory provisions and does not impose any requirements beyond those included in federal and state laws and regulations. In addition it does not create or confer any rights for or on any person.

Please use this document as a:

- Structured process for implementing special education policies.
- Reference for answering questions.
- Staff development tool.
- Source for resources of support and assistance.

It is a living document and will be updated on a regular basis as South Carolina receives further guidance from the United States Department of Education, Office of Special Education Programs, results of court decisions, and changes in state statute. For the South Carolina special education regulations, please consult State Board of Education regulation 43-243. To ensure that you are referencing the most recent version of the policies and procedures, please check the date of the document.

The South Carolina Department of Education does not discriminate on the basis of race, color, religion, national origin, age, sex, or disability in admission to, treatment in, or employment in its programs and activities. Inquiries regarding the nondiscrimination policies should be made to the Employee Relations Manager, 1429 Senate Street, Columbia, South Carolina 29201, (803-734-8781). For further information on federal non-discrimination regulations, including Title IX, contact the Assistant Secretary for Civil Rights at OCR.DC@ed.gov or call 1(800)421-3481.

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These policies and procedures were created to provide a practical guide to implementation of the IDEA and its implementing regulations. This is a "living" document and will change and grow as resources and information become available.

CHAPTER 11: CONFIDENTIALITY

INTRODUCTION

Confidentiality of educational records is a basic right shared by all students in LEAs and their parents. These fundamental rights are described in the Family Educational Rights and Privacy Act (FERPA) of 1974, as amended (2011).

Confidentiality regulations apply to the State, to all LEAs and to private schools that accept federal funds. In addition, all school personnel (including contracted employees) are governed by confidentiality requirements of the IDEA, which apply to students with disabilities.

Confidentiality is one of the rights afforded to parents and is included in the Parent Rights document. All people involved in special education should be aware of the laws and regulations ensuring that all records and information will be kept secure and remain confidential.

This chapter provides specific information about confidentiality requirements for schools:

- A. Federal and State Requirements**
- B. Access to Records**
- C. Transfer of Records**
- D. Release of Information**
- E. Amendment of Records**
- F. Destruction of Records**
- G. Age of Majority**
- H. Test Protocols**
- I. Discipline Records**
- J. Questions and Answers on Confidentiality**

A. FEDERAL AND STATE REQUIREMENTS

Each school shall annually notify parents of their rights under FERPA. The notice must inform parents or adult students that they have the right to:

- Inspect and review the student's education records;
- Seek amendment of the student's education records that the parent or eligible student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;
- Consent to disclosures of personally identifiable information contained in the student's education records, except to the extent that § 99.31 of FERPA authorize disclosure without consent; and
- File a complaint under §§ 99.63 and 99.64 concerning alleged failures by the educational agency or institution to comply with the requirements of FERPA.

The LEA must also inform parents of:

- The procedure for exercising the right to inspect and review education records.
- The procedure for requesting amendment of records.

The LEA may provide this notice by any means that are reasonably likely to inform the parents or eligible students of their rights. The LEA shall effectively notify parents who have a primary or home language other than English. (34 CFR § 99.7) This notice should adequately inform parents prior to any identification, location, or evaluation activity taking place.

Generally, most private and parochial schools at the elementary and secondary levels do not receive funds under any program administered by the Department of Education funds and are, therefore, not subject to FERPA. However, if a student is placed in a private school under IDEA, the placing public agency (typically the LEA) remains responsible under FERPA for that specific student's records and compliance with FERPA.

Definitions of terms used are as follows (34 CFR § 300.32):

Personally identifiable means information includes information such as the name of the child, child's parents, or other family member; address; personal identifier such as the child's social security number or student number; or list of personal characteristics or other information that would make it possible to identify the child.

Destruction means physically destroying the medium on which information is recorded or removing all personal identifiers from the information so no one can be identified.

Educational records means any document or medium on which information directly related to one or more students is maintained by a participating agency.

Participating agency means any educational agency or institution that collects maintains or uses personally identifiable student information to provide special education and related services to children with disabilities.

In addition to these federal requirements, the SCDE is obligated to establish policies and procedures to ensure that confidentiality requirements are in place at every participating agency. The SCDE does this by having each public agency accessing funds sign assurances and adopt or establish local policies and procedures consistent with confidentiality requirements.

B. ACCESS TO RECORDS

The FERPA and federal and state special education laws and regulations require schools to have reasonable policies in place to allow parents to review and inspect their child's records. An education record means those records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution.

Educational records may include, but not limited to:

- academic work completed and level of achievement
- attendance data
- scores and test protocols of standardized intelligence, aptitude, and psychological tests
- interest inventory results
- health data
- family background information
- information from teachers or counselors
- observations and verified reports of serious or recurrent behavior patterns
- IEPs
- documentation of notice and consent

Under certain circumstances, a teacher's working file would not be considered to be part of the child's record. FERPA regulation 34 CFR § 99.3, states that the term "education records" does not include records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.

The LEA must prevent the disclosure to any unauthorized person of personally identifiable information pertaining to all students. Disclosure is the release, transfer or other communication of records, or the personally identifiable information contained in those records, to any party, by any means, including oral, written, or electronic.

The FERPA allows parents to inspect and review all education records of their children maintained by an educational agency that receives federal funds. This includes all LEAs and private schools that accept federal funds. The school must comply with a request to inspect records within a reasonable time, not to exceed 45 calendar days. **IDEA regulations stipulate, “(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution sessions § 300.510, and in no case more than 45 days after the request has been made.”**

The FERPA regulations allow some exceptions to the requirement to obtain parent consent before releasing records. All of these exceptions also apply to the confidentiality requirements in the federal special education regulations (34 CFR § 300.622(a)). For example, FERPA allows the school to release records to authorized individuals, such as:

- other school officials, including teachers at the school where the student attends, who have a legitimate educational interest (34 CFR § 99.31(a)(1));
- officials of another school, LEA, or postsecondary educational institution where the student is enrolled or seeks or intends to enroll, If (a) the LEA's annual notice included a notice that the LEA forwards education records to other agencies that request records and in which the student seeks or intends to enroll; or (b) the LEA makes a reasonable attempt to notify the parents or the student of the disclosure at the last known address (34 CFR § 99.31(a)(2)), however no notice is required if the disclosure is initiated by the parent or adult student;
- authorized representatives of the US Comptroller General, US Secretary of Education, and State Educational Agencies in connection with an audit or evaluation of Federal or State supported programs, or for the enforcement or compliance with Federal legal requirements related to those programs (34 CFR § 99.31(a)(3));
- disclosure in connection with financial aid for which the student has applied or received to determine eligibility, amount, or conditions of the aid or to enforce the terms and conditions of the aid (34 CFR § 99.31(a)(4));
- disclosure to State and local officials to whom the information is specifically allowed to be reported pursuant to State statute (34 CFR § 99.31(a)(5));
- disclosure to organizations conducting studies for educational agencies to develop, validate or administer predictive tests; administer student aid programs; or improve instruction, but only if the study does not allow personal identification of parents and students to anyone other than representatives of the organization conducting the study, and if the information is destroyed when no longer needed for the purposes for which the study was conducted (34 CFR § 99.31(a)(6));
- disclosure to accrediting organizations to carry out their functions (34 CFR § 99.31(a)(7));
- disclosure to a parent of a student who qualifies as a dependent under section 152 of the Internal Revenue Service Code (34 CFR § 99.31(a)(8));

- disclosure of relevant educational records to a court in a legal action initiated by the LEA against a parent. Also, disclosure to comply with a judicial order or subpoena. However, these disclosures may be made only if the LEA makes a reasonable effort to notify the parents or eligible student of the order or subpoena in advance of compliance with the order or subpoena, unless the order or subpoena states that the existence or contents of the order or subpoena not be disclosed (34 CFR § 99.31(a)(9));
- disclosure in connection with a health or safety emergency, if knowledge of the information is necessary to protect the health or safety of the student or other individuals (34 CFR § 99.31(a)(10));
- disclosure of directory information. This is information contained in an education record of a student which would not generally be considered harmful or an invasion of privacy if disclosed. It includes, but is not limited to, the student's name, address, telephone listing, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most previous educational agency or institution attended (34 CFR § 99.31(a)(11));
- disclosure to the adult student or student of any age if attending a postsecondary school, or to the parents of a student who has not reached 18 years of age and is not attending an institution of postsecondary education (34 CFR § 99.31 (a)(12)); and
- disclosure of the results of any disciplinary proceeding conducted by an institution of postsecondary education against an alleged perpetrator to an alleged victim of any crime of violence, as defined by § 16 of Title 18, United States Code (34 CFR § 99.31 (a)(13)); or
- disclosure to a parent of a student attending an institution of post secondary education regarding the illegal use of alcohol (34 CFR § 300.622(a)).

To ensure protection of education records, the LEA must:

1. Obtain written consent before disclosing personally identifiable information to unauthorized individuals. A parent must provide consent if the child is under 18 years of age (unless one of the exceptions listed above applies).
2. Designate and train a records manager to assure security of confidential records for students with disabilities.
3. Keep a record or log of all parties obtaining access to education records, including the name of the party, the date access took place, and the purpose of the authorized use.
4. Maintain for public inspection a current listing of names and positions of employees who may have access to personally identifiable information.
5. Ensure the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
6. Ensure that, if any education record includes information on more than one student, a parent of a child must have the right to inspect and review only the information relating to his or her child, or to be informed of that specific information.
7. Ensure that each person collecting or using personally identifiable information receives training or instruction regarding the policies and procedures governing confidentiality of personally identifiable information. The LEA must maintain a record of the training provided, the person or persons providing the training, dates of the training, those attending, and subjects covered.
8. Provide a parent, upon request, a list of the types and locations of records collected, maintained, or used by the LEA.
9. Respond to any reasonable request made by a parent for an explanation and interpretation of a record.
10. Provide a parent, upon request, access to the child's records, and under certain circumstances, a copy of the records (34 CFR § 300.613). Most LEAs copy records for parents without charge. However, the law does allow for fees for copies of records made for a parent if the fee does not prevent a parent from exercising the right to inspect and review those records. A fee may not be charged to search for or retrieve information.

C. TRANSFER OF RECORDS

Education records include personally identifiable information, and may not be released to another agency or organization without parent consent. However, when a student transfers to another LEA, education records may be forwarded without student or parent consent if the annual FERPA notice to parents includes a statement that these records will be forwarded to the receiving school. Schools are permitted to disclose a student's education records to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll. Immunization records are included in the educational records (under the annual notification exception) that may also be shared with a receiving school without student or parent consent. By sharing such information between schools, the unnecessary immunization of children can be avoided.

South Carolina schools may NOT withhold records because of fines or other such reasons. The sending LEA is to transfer the original school record to the requesting LEA. The sending LEA should maintain a copy of the educational record that is sent. In addition, South Carolina special education regulations require the sending LEA to immediately transfer the IEP, and any additional educationally relevant information regarding a child with a disability, to the receiving LEA. If the school's annual FERPA notification does not contain a statement that the school sends educational records to a receiving school, it must make a reasonable attempt to notify the parent at the last known address of the parent.

D. RELEASE OF INFORMATION

As discussed in previous sections, consent from the parent or adult student is required before education records may be released (34 CFR § 300.622). Some examples of when parent consent is required include:

- If a child is enrolled, or is going to enroll in a private school that is not located in the parent's LEA of residence, parental consent must be obtained before any personally identifiable information about the child is released between officials in the LEA where the private school is located and officials in the LEA of the parent's residence (34 CFR § 300.622(a)(3)).
- Parental consent must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services according to an IEP.
- Additionally, parent consent is required when a school accesses reimbursement from Medicaid or private insurance for special education services. To bill Medicaid, the school must release to the Medicaid billing agency personally identifiable information, such as the student's name, social security or other student number, category of disability, and other pertinent information.
- Consent for use of private insurance and Medicaid: The district must obtain a one-time written consent from the parent, after providing written notification of the intent to bill, but before accessing the child's or the parent's public benefits or insurance for the first time. This consent must specify (a) the personally identifiable information that may be disclosed (e.g., records or information about the services that may be provided to a particular child); (b) the purpose of the disclosure (e.g., billing for services); and (c) the agency to which the disclosure may be made (e.g., Department of Health and Human Services). The consent also must specify that the parent understands and agrees that the public agency may access the child's or parent's public benefits or insurance to pay for services.

- In addition to the requirement to provide written notification prior to accessing the child's or the parent's public benefits or insurance for the first time and prior to obtaining the one-time parental consent, the district must continue to provide written notification annually to the child's parents before accessing the public benefits or insurance.
- The written notification must explain all of the protections available to parents under Part B of the IDEA, as described in 34 C.F.R. § 300.154(d)(2)(v) to ensure that parents are fully informed of their rights before a public agency can access their or their child's public benefits or insurance to pay for services under the IDEA. The notice must be written in language understandable to the general public and in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so.

Consent is not needed to disclose information under the following conditions:

1. The disclosure is to other school officials, including teachers, within the agency or institution whom the agency or institution has determined to have legitimate educational interests.
2. A contractor, consultant, volunteer, or other party to whom an agency or institution has outsourced institutional services or functions may be considered a school official under this paragraph provided that the outside party—
 - Performs an institutional service or function for which the agency or institution would otherwise use employees;
 - Is under the direct control of the agency or institution with respect to the use and maintenance of education records; and
 - Is subject to the requirements of § 99.33(a) governing the use and redisclosure of personally identifiable information from education records.
3. The disclosure is, subject to the requirements of § 99.34, to officials of another school, school system, or institution of postsecondary education where the student seeks or intends to enroll, or where the student is already enrolled so long as the disclosure is for purposes related to the student's enrollment or transfer.

An educational agency or institution must use reasonable methods to ensure that school officials obtain access to only those education records in which they have legitimate educational interests. An educational agency or institution that does not use physical or technological access controls must ensure that its administrative policy for controlling access to education records is effective and that it remains in compliance with the legitimate educational interest requirement.

E. AMENDMENT OF RECORDS

Parents have the right to request that their child's education records be changed if something is inaccurate, misleading, or in violation of the student's rights of privacy. For example, if a child is evaluated and is identified with a disability or health condition that later is determined to be wrong, the parents may ask that the school remove the records relating to the inaccurate diagnosis.

If the school does not agree that the education records should be changed, staff must provide an opportunity for a hearing, following FERPA requirements. The hearing officer would be the school's hearing officer, not a special education due process hearing officer (34 CFR § 300.618).

F. DESTRUCTION OF RECORDS

Federal auditing requirements necessitate the availability of education records for identified students for 5 years after they exit from special education services. After that period of time, LEAs may destroy records. However, before destroying special education records, the LEA must notify the parent (or the adult student) that the information is no longer needed to provide services to the student and that the school is proposing to destroy them.

The requirement to notify the parent or the adult student before records are destroyed may be problematic, if the student moves from the address last known to the LEA. In such cases, the LEA is advised to send a certified letter to the student at the last known address. If that letter is returned to the LEA, that return becomes the documentation of the LEA's attempt to inform the student of the proposed destruction of records. In such cases, the LEA may publish a public notice to students who graduated or left school five years previously. The notice should be addressed to students and guardians, advising them of the proposed destruction of records and asking them to contact the LEA if they object to the destruction.

Many LEAs inform parents of when the special education records of their child will be destroyed with a statement in the LEA's handbook. The following statement is an example:

“NOTICE OF DESTRUCTION OF SPECIAL EDUCATION RECORDS: Special education records for each child with a disability are maintained by the LEA until no longer needed to provide educational services to the child. This notice is to inform you that the special education records for this student will be destroyed after five (5) years following program completion or graduation from high school, unless the student (or the student's legal guardian) has taken possession of the records prior to that time.”

Parents may also ask that their child's records be destroyed. However, a permanent record of the following information may be maintained without time limitation:

- A student's name, address, and phone number;
- His or her grades;
- Attendance record;
- Classes attended;
- Grade level completed; and
- Year completed.

G. AGE OF MAJORITY

In South Carolina, the age of majority is 18. Students who are 18 years or older, unless they have a guardian appointed under State law, have the right to grant or withhold consent, have access to records, to amend records, and to file a complaint, etc. (See Chapter 1, Parent Rights In Special Education, for additional information on age of majority.) When a student turns 18 years old, or enters a postsecondary institution at any age, the rights under FERPA transfer from the parents to the student, and he or she is known as an “eligible student” under FERPA.

H. TEST PROTOCOLS

Some individualized testing involves the use of test protocols. Test protocols commonly refer to written instructions on how a test must be administered and the questions posed. Generally, these test protocols are original creations of independent authors and/or organizations. Therefore, they may be protected by the U.S. Copyright Act of 1976, the Digital Millennium Copyright Act of 1988, as well as

other State, Federal, and international acts and conventions. If a given test protocol is copyrighted, it may not be reproduced, transmitted, distributed, publicly displayed, nor may a derivative work be created therefrom, without express permission from the copyright owner, unless such use is allowed under the Fair Use Doctrine.

The Office of Special Education and Rehabilitative Services (OSERS) has noted that if a document is copyrighted, the IDEA's inspection and review rights generally do not implicate copyright law. Since IDEA and FERPA generally do not require the distribution of copies of an education record, but rather parental access to inspect and review, Federal copyright law generally should not be implicated under these regulations. *However, when a test protocol contains personally identifiable information directly related to a particular student, that protocol is an education record.*

Requests for test protocols occur in varying contexts. Sometimes, parents ask to inspect or photocopy protocols maintained by LEAs or their personnel. Occasionally, LEAs want to review or copy protocols of the parents' independent educational evaluators. The variables here are whether one seeks to inspect the protocols or to copy them.

"A test protocol or question booklet which is separate from the sheet on which a student records answers and which is not personally identifiable to the student would not be part of his or her 'education records'." Analysis, 64 Fed. Reg. at 12641. When a child's information is integrated throughout the test protocol, it contains child-specific information that is factual, personally identifiable information, and reflects the child's level of functioning, it becomes an educational record.

When a student with a disability is the subject of a court or administrative hearing, parents may have additional legal tools for accessing test protocols. These tools include pretrial discovery, subpoenas, and the right to question witnesses about their records. Also, the U.S. Department of Education has advised that a parent's FERPA right to inspect test protocols may include a right to copy them if ordered by a special education due process hearing officer or a judge in a legal proceeding.

If failure to provide a copy of a requested protocol would effectively prevent the parent from exercising the right to inspect and review their child's educational records, the LEA may be required to provide a copy to the parent. In a situation where a copyrighted document has been made part of a child's education record because it includes child-specific information, the LEA may wish to contact the copyright holder to discuss whether a summary or report of the child's evaluation and assessment results can be prepared that can be provided to the parents as part of the child's education record, in lieu of providing a copy of the copyrighted document. Such a summary or report would provide parents with the necessary and pertinent information regarding their child's developmental functioning and areas of strengths and need.

Separately, we note that the LEA must provide parents with an explanation of the results of their child's evaluation and assessment as part of the notice that must be provided to before the agency proposes or refuses to initiate or change the identification, evaluation, or placement their child, or the provision of appropriate early intervention services to the child and the child's family. This notice must provide an explanation of the child's evaluation and assessment results in a manner that would adequately inform the parent about how and in what areas the child was evaluated and assessed, and include the child's data or performance against such measures in order to explain the basis of the child's eligibility determination. A summary or report may both meet this requirement.

I. DISCIPLINE RECORDS

LEAs reporting a crime are allowed to forward the student's special education and disciplinary records to the appropriate authorities only if they have parent consent or if one of the FERPA exceptions to the consent requirement applies (34 CFR § 300.535(b)). See Section A of this chapter, and also Chapter 13 for more information about release of discipline records to law enforcement.

In addition, other federal and state requirements are as follows:

- When LEAs send records of students to other LEAs, they are also required to include the discipline records.
- If LEA employees are required to make a report to a law enforcement agency, they may be charged with failure to report if they do not comply.
- If LEA employees report a crime, the LEA may not impose sanctions on them.
- If LEA employees report a crime in good faith, they have immunity from civil liability.

J. QUESTIONS AND ANSWERS ABOUT CONFIDENTIALITY

1. What must an LEA do to provide parents reasonable access to their child's records?

Records should be in a location that parents can find, maintained during normal business hours, and not in a physically inaccessible area (downstairs or upstairs, with no elevator available). Upon request, someone who can interpret the records should be available to the parents. Parents may also request that copies of their child's education records be made for them. However, an LEA is required to provide copies of educational records only if failure to provide those copies would effectively prevent the parent from exercising the right to review and inspect the records. If copies are provided LEAs may charge a reasonable fee and may take a reasonable time to provide the copies to the parents. In cases where failure to provide copies of records would effectively prevent a parent from exercising the right to inspect and review education records, and the parents are unable to pay the fee, the LEA must provide the records without charge. IDEA regulations stipulate, "(a) Each participating agency must permit parents to inspect and review any education records relating to their children that are collected, maintained, or used by the agency under this part. The agency must comply with a request without unnecessary delay and before any meeting regarding an IEP, or any hearing pursuant to § 300.507 or §§ 300.530 through 300.532, or resolution sessions § 300.510, and in no case more than 45 days after the request has been made."

2. Are LEA personnel required to provide parents access to their working files and anecdotal records?

The FERPA and the IDEA include definitions of "education records." These definitions, while expansive, do not include the staff's working files and anecdotal records. FERPA regulation 34 CFR § 99.3 states that the term "education records" does not include "records that are kept in the sole possession of the maker of the record, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record."

3. Only a limited amount of information is needed to bill Medicaid (not the entire education record). May this limited information be released without parent consent to the Medicaid billing agency in order to access reimbursement for special education services?

No. Parent consent is required by FERPA, because the information being released is personally identifiable (student's name, social security or other student number, category of disability, etc.). In addition, LEAs must obtain parental consent to access public insurance such as Medicaid, at least annually for the specific services, and duration of those services identified in the child's IEP. The LEA must obtain parental consent to access Medicaid for any change in a service or amount of a service.

4. When a student is in a private school and receives special education services from the LEA, who keeps the student's educational record?

If the student receives special education services through the LEA, the LEA is responsible for maintaining the student's educational record. The private school may also have records, or copies of the LEA records, including the student's IEP, if appropriate.

5. What should the LEA do if during a due process hearing, the parents request a copy of their child's test protocol?

According to the U.S. Department of Education, under FERPA, if the protocol contains personally identifiable information, parents have the right to inspect test protocols, which may include a right to copy them if ordered by a special education due process hearing officer or a judge in a hearing. Due to concerns about violating the test publisher's copyright rules, the LEA may want to consult with their attorney.

However, LEAs are required to provide copies of the records if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records (34 CFR § 300.613(b)(2)).

6. How long must an LEA retain special education records for children with disabilities?

Federal auditing requirements mandate the availability of education records for identified students for 5 years after they exit from special education services. After that period of time, LEAs may destroy records. However, before destroying special education records, the LEA must notify the parent (or the adult student) that the information is no longer needed to provide services to the student and that the school is proposing to destroy them.

Statutory authority

On 24 June 1994, the General Assembly approved the school district general schedules as Regulation 12-901 through 12-906.6. Additions/revisions to the school district general schedules were approved by the General Assembly as Regulation 12-901 through 12-906.16 and became effective on May 23, 2003.

12-906.2. Special Education Records (Local School District Program Scholastic Records For Handicapped Students)

A. Description: Documents a handicapped student's participation and progress in a special education program. Information includes handicapped/psychological needs, placement forms, record of staffing, individual educational programs, confidential education reports, and least restrictive environment verification papers.

B. Retention: Until no longer needed to provide educational services to the student or for the necessary school district purposes such as auditing or monitoring, then notify the parents that they have a right to have these records destroyed. If the parents so request, the records must be destroyed. If the parents do not request destruction, the school district may retain these records permanently or destroy them at their discretion. In all instances of destruction, the parents of the student must be notified 45 calendar days prior to destruction that they have a right to request and be provided a copy of any personally identifiable data which has been obtained or used while providing educational services for their children. Documentation of the notification of parents must be retained permanently. (Note: This retention does not apply to the permanent record of a student's name, address, telephone number, grades, attendance record, classes attended, grade level completed, and year of completion.)

7. Destruction of records – Are letters of invitation (notification) and responses included as special education records?

Yes. Because the letters of invitation and responses include personally identifiable information and are maintained by the LEA these documents are education records.

8. If a child has HIV infection does the school have the right to know?

Because the disclosure of HIV infection has resulted in discrimination, harassment, and isolation for far too many people and the transmission risks are extremely low in school, a person's confidentiality about his or her HIV status is protected by law. If a minor has Acquired Immunodeficiency Syndrome (AIDS) or is infected with Human Immunodeficiency Virus (HIV), and is attending a South Carolina public school, the Department of Health and Environmental Control (DHEC) must notify the superintendent of the school district and the nurse or other health professional assigned to the school the minor attends (S.C. Code Ann. § 4429135(e)). This information must be kept strictly confidential by the school superintendent, school nurse or other health professional assigned to the public school and should only be revealed to public

school personnel who have a bona fide need to know. All persons receiving the information must keep the information strictly confidential (S.C. Code Ann. Regs. §61-11 G(3)). If a parent/guardian discloses the child's HIV status to specific school staff, staff may not legally disclose the child's HIV infection status to other school staff, students, or parents without informed written consent.

9. If a child has health issues such as hepatitis or MRSA, who at the school has a right to know?

FERPA prohibits schools from disclosing personally identifiable information from students' education records without the consent of a parent or eligible student, unless an exception to FERPA's general consent rule applies. In some situations, the FERPA permits schools to disclose to health agencies personally identifiable information on students without consent under the "health or safety emergency" exception, if knowledge of the information is necessary to protect the health or safety of students or other individuals. An emergency does not include the threat of a possible or eventual emergency for which the likelihood of occurrence is unknown. Under the health or safety emergency provision, the appropriate personnel within the school district are responsible for making a determination of whether to make a disclosure of personally identifiable information on a case by case basis, taking into account the totality of the circumstances pertaining to the threat. If the school district or school determines that there is an articulable and significant threat to the health or safety of the student or other individuals and that certain parties need personally identifiable information from education records to protect the health or safety of the student or other individuals, it may disclose that information to such appropriate parties without consent. 34 C.F.R. § 99.36. School districts must make sure that there is a rational basis for decisions about the nature of the emergency and the appropriate parties to whom information should be disclosed. (The burden is on the school district to defend the release of information.)

School district personnel, however, must within a reasonable period of time after a disclosure is made, record in the student's education records the articulable and significant threat that formed the basis for the disclosure and the parties to whom information was disclosed. 34 C.F.R. § 99.32(a)(5). This is required as evidence of why the decision was made to release the information and is necessary in the event that the parent or eligible student files a complaint regarding the release of personally identifiable information without consent. Before releasing personally identifiable information, school district personnel should be mindful that oftentimes threats to health or safety can be fully addressed by sharing appropriate information regarding such threats with parents, the health department, or others in a manner that does not identify particular students

South Carolina First Steps to School Readiness/BabyNet

BabyNet Confidentiality Policy

BabyNet Confidentiality Policy

1. All personally identifiable information must be treated as confidential information. Parents must be given the right to prior written notice, and the right to consent to exchange of information shared among BabyNet participating agencies.
2. All BabyNet System Personnel including service coordinators and service provide must protect the confidentiality of all personally identifiable information.
3. Confidentiality will be ensured through use of periodic confidentiality training, certification, and monitoring of compliance with the requirement.
4. Parents of children referred or found eligible for BabyNet have the right to inspect and review all early intervention records, including evaluations, assessments, screening, eligibility determination, development of IFSPs, documentation of service provision, and complaints, and any other part of the early intervention record.
5. The confidentiality of all personally identifiable information (collected, used, or maintained) applies from the time of referral until the record is no longer retained under South Carolina state law.
6. The following personally identifiable information will be shared with the South Carolina State Department of Education and Local Education Agencies to facilitate identification of all children potentially eligible for preschool special education services.
 - a. A child's name.
 - b. A child's date of birth.
 - c. Parent contact information (including parents' names, addresses, and telephone numbers).
7. Parental consent for referral to the South Carolina Department of Education and the child's Local Education Agency is only required when the child is referred to BabyNet within 45 days of the child's third birthday.