

**Michigan *Early On*<sup>®</sup>**  
**Technical Assistance Bulletin**  
**Part C Records, Access, and Confidentiality**

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The early intervention system under Part C provides parents with procedural safeguards related to their child's early intervention record. Part C implementing regulations (34 CFR 303) require that each state adopt confidentiality procedures which meet the confidentiality requirements in Part B of the Individuals with Disabilities Education Act (IDEA). The Part B confidentiality requirements (34 CFR 300.560-300.576) incorporate by reference the regulations in 34 CFR Part 99 (Family Educational Rights and Privacy Act, otherwise known as FERPA).

The state of Michigan Part C State Plan incorporates Procedural Safeguard Standards which require local early intervention systems to establish and implement policies and procedures that ensure the confidentiality of personally identifiable information, consistent with federal Part C/Part B/FERPA requirements and Michigan Procedural Safeguard Standards.

There are additional confidentiality protections that deal with such sensitive information as HIV/ARC/AIDS testing (MCLA 333.5131), participation in federally-assisted alcohol or drug abuse programs (42 CFR Part 2) and Child Protective Services records (MCLA 722.621, *et seq.*; 722.627).

This bulletin provides guidance to local early intervention systems in the development and implementation of procedures which address parent rights related to access to early intervention records and confidentiality of such records.

**QUESTION: WHAT DO THE STATE INTERAGENCY AGREEMENT AND THE STATE PROCEDURAL SAFEGUARD STANDARDS REQUIRE LOCAL EARLY INTERVENTION SYSTEMS TO DO IN THE AREA OF RECORDS, ACCESS, AND CONFIDENTIALITY?**

**ANSWER:** The State Interagency Agreement requires local early intervention systems to develop a local interagency plan that includes procedures for record maintenance, parent access to records, and exchange of information with parental consent. These procedures must conform to federal requirements and to the state Procedural Safeguard Standards.

The state Procedural Safeguard Standards require each agency (both public and private) participating in local early intervention systems to implement the following:

### Parent Access

1. Upon request permit parent access to Part C records before any meeting regarding an Individualized Family Service Plan (IFSP) or Part C hearing, and in no case more than 15 working days after the request. This access includes the right to explanations and interpretations by professional staff and to have a parent representative inspect and review the records.
2. Keep a record of access to Part C records (except parents and authorized employees of the participating agency), including name, date, and purpose of access.
3. On request, provide parents with a list of the types and locations of all Part C records collected, maintained, or used by the agency. A central Part C file must be established and maintained as set forth in the local interagency plan.
4. Not charge fees for searching and retrieving records for parent inspection and review.
5. A participating agency may charge a fee for copies of records which are made for parents under Part C if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

### Parent Amendment of Records

A parent who believes that information on Part C records collected, maintained, or used under Part C is inaccurate or misleading or violates the privacy or other rights of the child/family may request amendment of records originally collected or produced by the agency, including: (a) a decision to parents within 15 working days of request; (b) if the request to amend records is denied, the right to append an explanation of objection to the record or to have a hearing on the issue conducted by the agency within 30 calendar days of the parent request for hearing; any resulting amendment must be substituted for the original record; any parent explanation must be attached to the record objected to; and (c) amendments and explanations must be forwarded to parties to whom previous disclosure has been made and in any future releases of such information.

### Release of Information

The state Procedural Safeguard Standards require a written request and written parental consent before personally identifiable information is:

1. Transferred between Part C and non-Part C files maintained by the agency, e.g., from an ISD Part C file to an ISD Part B special education file or vice versa.<sup>1</sup>

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<sup>1</sup> MCLA 722.627(1)(e) [also known as Sec. 7(1)(e)] would allow Child Protective Services (CPS) to transmit without parent consent protective file information to a person (e.g., a parent, guardian or surrogate), agency or organization, including a multi-disciplinary case consultation team (e.g., an IFSP team) authorized to diagnose, care for, treat, or supervise a child or family who is the subject of a report or record under the Child Protection Law, or who is responsible for the child's health and welfare. However, given the overriding federal mandate for parental empowerment found in Part C statutory and regulatory language, the IFSP team will not independently seek information under Section 7(1)(e). If the parent desires the release of CPS information to the child/family's

2. Transferred/released from a Part C file to non-Part C agencies or entities.
3. Transferred/released from one agency's Part C file to another Part C agency.
4. Used/transferred/released from a Part C file for a non-Part C purpose.

### General Safeguards

The state Procedural Safeguard Standards provide certain confidentiality safeguards, including: (a) the appointment of an agency procedural safeguards "oversight" official; (b) training/instruction to all agency staff collecting or using personally identifiable Part C information; and (c) a current listing of names and positions of agency employees who may have access to personally identifiable Part C information.

#### **QUESTION: WHAT IS A PART C RECORD? WHAT IS NOT?**

**ANSWER:** Procedural Safeguard Standard 340.1901 defines a Part C record as: "...any information, recorded in any way, maintained by an agency, institution, or service provider (whether public or private) or by any party acting for an agency, institution, or service provider that is needed to initiate referral or provide services to the eligible child and his/her family under Part C. This information would include referral information, evaluation and assessment information, eligibility determination, development and implementation of IFSPs, summaries of follow-up meeting, requests for due process hearings, and complaints dealing with the child.

A Part C record is a piece of information specifically pertinent to implementation of Part C. A record can take any number of forms, including documents, films, video and audio tapes, slides, photos, electronic data, etc. It is not synonymous with a Part C file, which describes a possible method for housing, or a location for, Part C records. Even though Part C is family centered, this does not mean that it is necessary or even appropriate to have all possible child and family information on a Part C file. A Part C file should contain only Part C records, i.e., only what is needed to implement Part C.

#### **QUESTION: DO PARTICIPATING PART C AGENCIES HAVE TO CREATE A NEW, SEPARATE FILE TO HOUSE PART C INFORMATION?**

**ANSWER:** The local lead agency must ensure that a central Part C file is established and maintained for each child referred for and/or receiving services under Part C. Each agency must provide parents on request a list of the types and locations of Part C records collected, maintained, or used by the agency. A participating agency has the option of maintaining information pertinent to Part C in separate locations or pulling together such information in one specific Part C file. However, it is important to remember that parental access and confidentiality protections attach to Part C information wherever an agency may keep such

records. A parent has the option of going to each agency for Part C information generated by that agency, or doing "one stop shopping" at the central Part C file.

**QUESTION: HOW DOES INFORMATION GET INTO THE CENTRAL PART C FILE?**

**ANSWER:** The early intervention system first starts compiling Part C information at the time of an initial inquiry as to whether a child may be eligible for Part C early intervention services. When the inquiry comes from a parent, it will be a straightforward matter, in obtaining informed consent for evaluation/assessment, to explain that a byproduct of evaluation and assessment will be written documents which, as Part C records, will become part of the child and family Part C file. Likewise, notice of an initial, annual, or review IFSP meeting would explain that the purpose of the meeting would be to generate, revise, or review a written IFSP. Thus, consenting to participate in the early intervention process will lead to inquiry, intake, screening, referral, evaluation, assessment, and IFSP documents being generated and becoming Part C documents or records. It does not require specific consent to put these documents into the central Part C file.

Other information may get into the central Part C file because it makes sense to not duplicate information pertinent to evaluation/assessment, eligibility, or services, that has already been collected by another agency and the parent consents to release such information from that agency to the central file. Some information is of such a sensitive nature that special federal or state legislation has been enacted to protect confidentiality. Thus specific consent language has been developed for the parent/guardian to authorize release of information stemming from their participation in a federally-funded drug or alcohol treatment program, or release of HIV/AIDS test results or status regarding themselves or their child. Child Protective Services file information will only be placed in the central Part C file if (1) the parent/guardian/surrogate obtains such information under Section 7(1)(e) of the Child Protection Law; (2) it is needed to implement Part C services for the child/family; and (3) the parent re-releases that information to the IFSP team.

**QUESTION: WHO KEEPS THE CENTRAL PART C FILE?**

**ANSWER:** While the ISD, as local lead agency, has the overall responsibility to assure that a central file is established and maintained, this does not mean that the ISD must necessarily physically house such files. The State Interagency Agreement recognizes that the ISD may contract or delegate administrative functions pursuant to the local Memorandum of Understanding and pursuant to the local interagency plan for delivery of early intervention services. This allows flexibility to meet local and family needs. An ISD could, for example, contract with another agency to maintain central files, or could delegate the establishment and maintenance of the central file to the respective service coordinator for the given child/family. Since service coordinators might come from a variety of agencies, the ISD would keep a list of which service coordinators are responsible for which files, and where these files will be kept. Even if the ISD contracts or delegates record keeping functions, it bears final oversight responsibility for Part C central files and ensuring procedural safeguards/confidentiality.

**QUESTION: WHO CAN ACCESS PART C RECORDS?**

**ANSWER:** Parents have the right to access (i.e., inspect and review) Part C records before any meeting regarding an IFSP, before any due process hearing related to identification, evaluation, or placement of the child, but in no case later than 15 working days from a request to access records. The parent may bring an advocate or representative, or authorize (by written consent) a representative to inspect and review records on his/her behalf. A parent, even if noncustodial as a result of divorce or separation, may be presumed to have the authority to inspect/review records relating to his/her child unless the participating agency has been given a court order to the contrary. The participating agency must keep a record in the file of all individuals who accessed the file.

**QUESTION: UNDER WHAT CONDITIONS MAY PART C RECORDS BE RELEASED OR DISCLOSED?**

**ANSWER:** With parent consent, Part C records may be transferred to non-Part C records/files maintained by the same agency, to another participating Part C agency, or to a non-Part C agency/entity. If a parent has obtained CPS file information under Section 7(1)(e) of the Child Protection Law and releases such information into the Part C file, such information may be released from the Part C file only to those persons otherwise authorized under Section 7(1)(e).

FERPA allows the release of information without parental consent under certain enumerated conditions, for example: pursuant to judicial order or lawfully issued subpoena, health or safety emergency, and audit/evaluation of federal or state supported education programs. These conditions parallel those identified in the Mental Health Code (MCLA 350.1748) and in Section 7 of the Child Protection Law.

**QUESTION: HOW LONG MUST PART C RECORDS BE KEPT?**

**ANSWER:** Documents in the Part C central file should be kept seven years from creation pursuant to federal monitoring requirements under EDGAR. When information is no longer necessary under Part C, the local lead agency is to inform the family. If the parent requests destruction, the information must be destroyed, so that no information may be obtained by any persons or entities, including the Part C provider. However, a permanent record of the child's name, address, phone number, attendance record, and year services were terminated may be maintained without time limitation, pursuant to child find responsibilities for Part B of IDEA.

The Procedural Safeguard Standards require that when a child ceases to receive Part C services, his/her transition plan shall include provisions and conditions for the transfer or other disposition of Part C records.