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MEMORANDUM

TO: Intermediate and Local School District Directors of Special Education

FROM: Jacquelyn J. Thompson, Ph.D., Director
Office of Special Education and Early Intervention Services

DATE: May 21, 2007

SUBJECT: Transition Services and Public Agency Participation

It has come to the attention of the Office of Special Education and Early Intervention Services that there is some confusion regarding the requirement at Section 300.321(b)(3) of the final regulations governing the Individuals with Disabilities Education Act (IDEA), which states:

To the extent appropriate, with the consent of the parents or a child who has reached the age of majority, ... the public agency must invite a representative of any participating agency that is likely to be responsible for providing or paying for transition services.

In the discussion section of the Federal Regulations issued on August 14, 2006, the U.S. Department of Education addressed this issue.

Section 300.321(b)(3) was included in the regulations specifically to address issues related to the confidentiality of information. Under section 617(c) of the Act the Department must ensure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by SEAs and LEAs pursuant to Part B of the Act, irrespective of the requirements under FERPA. We continue to believe that a public agency should be required to obtain parental consent (or the consent of a child who has reached the age of majority) before inviting representatives from other participating agencies to attend an IEP Team meeting, consistent with §300.321(b)(3).

We do not believe that the requirements in §300.321(b)(3) are inconsistent with §300.321(a)(6). Section 300.321(a)(6) permits other individuals who have knowledge or special expertise regarding the child to attend the child's IEP Team meeting at the discretion of the parent or the public agency. It is

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clear that in §300.321(b)(3), the individuals invited to the IEP Team meeting are representatives from other agencies who do not necessarily have special knowledge or expertise regarding the child. In these situations, we believe that consent should be required because representatives of these agencies are invited to participate in a child's IEP Team meeting only because they may be providing or paying for transition services. We do not believe that representatives of these agencies should have access to all the child's records unless the parent (or the child who has reached the age of majority) gives consent for such a disclosure. Therefore, we believe it is important to include the requirement for consent in §300.321(b)(3).

Therefore, before another public agency is invited to an IEP Team meeting, consent must be obtained. In the Federal Regulations, Section 300.9, the definition of consent means:

- (a) The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
- (b) The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom; and
- (c)(1) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at anytime.
(2) If a parent revokes consent, that revocation is not retroactive (i.e., it does not negate an action that has occurred after the consent was given and before the consent was revoked).

Public agencies have flexibility to determine how they will obtain this consent. There is no time line as to how far in advance the consent may be obtained. Again, public agencies may create procedures to meet unique needs.