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RESPONSIBILITY FOR PROCEDURAL SAFEGUARDS

Std. 340.1900 Lead agency responsibility for procedural safeguards

The state lead agency is responsible for establishing procedural safeguards that meet all requirements under Part C. The Michigan Department of Education as state lead agency, through collaborative planning pursuant to the state interagency agreement, shall adopt procedural safeguards in accordance with Part C 34 CFR 303.400-460 and Part B 34 CFR 300.560-576 of IDEA and R 340.1901-1951 below. The state lead agency shall ensure that these procedural safeguards are implemented by each public agency involved in the provision of Part C services to Part C eligible children and their families.

STUDENT RECORDS/CONFIDENTIALITY OF INFORMATION

Std. 340.1901 Definitions

As used in these rules:

- (a) **Destruction** means physical destruction or removal of personal identification from information, so that information is no longer personally identifiable.
- (b) **A record** means the type of records covered under the Family Educational Rights and Privacy Act of 1974. A Part C record is 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 Individualized Family Service Plans, summaries of follow-up meetings, requests for due process hearings and complaints dealing with the child.

Records include (but are not limited to), files, evaluations, reports, studies, letters, telegrams, minutes of meetings, memoranda, summaries, inter-office or intra-office communications, memoranda reflecting oral conversations, handwritten or other notes, charts, graphs, data sheets, films, videotapes, slides, photographs, sound recordings, disks, tapes, and information stored on microfilm or microfiche or in computer-readable form. This definition does not override the exceptions set forth in FERPA Std. 99.3 "education records" (b).

(c) **Participating agency** means any agency, institution, or service provider (whether public or private) which collects, maintains, or uses personally identifiable information or from which such information is obtained, under the Part C Infant and Toddler Early Intervention Services System.

(d) **Part C** means the "Early Intervention System for Infants and Toddlers with Handicaps" presently codified as Part C of the Individuals with Disabilities Education Act.

(e) **Personally identifiable** means information that includes, but is not limited to:

- (1) The child's name;
- (2) The name of the child's parent or other family member;
- (3) The address of the child or child's family;
- (4) A personal identifier, such as the child's and/or parent's social security number;
- (5) A list of personal characteristics that would make the child's/family's identity reasonably certain; and
- (6) Other information that would make the child's/family's identity reasonably certain.

Std. 340.1902 Public notice to parents

(a) The state lead agency shall give public notice to fully inform parents about the confidentiality of information collected in identifying, locating (including Child Find activities), and evaluating Part C eligible infants and toddlers, including:

- (1) A description of the extent to which the notice is given in the native languages of the various population groups in the State;
- (2) A description of the children on whom personally identifiable information is maintained, the types of information sought, the methods the State intends to use in gathering the information (including the sources from whom information is gathered), and the uses to be made of the information;

(3) A summary of the policies and procedures which participating agencies must follow regarding storage, disclosure to third parties, retention, and destruction of personally identifiable information; and

(4) A description of all of the rights of parents and children regarding this information, including the rights under Section 438 of the General Education Provisions Act and Part 99 of this title (the Family Educational Rights and Privacy Act of 1974, and implementing regulations). (b) Before any state-wide identification, location, or evaluation activity, the notice must be published or announced in newspapers or other media, or both, with circulation to notify parents throughout the State of the activity.

Std 340.1903 Access rights

(a) Each participating agency shall permit parents to inspect and review records relating to evaluations and assessments, eligibility determinations, development and implementation of IFSPs, individual complaints dealing with the child, and any other area under this part involving records about the child and the child's family. The participating agency shall document the request and comply without unnecessary delay and before any meeting regarding an individualized family service plan or hearing relating to the identification, evaluation, or placement of the child, and in no case more than 15 working days after the request has been made.

(b) The right to inspect and review Part C records under this section includes:

(1) The right to a response from the participating agency to reasonable requests for explanations and interpretations of the records by a professional staff person. Parents who are deaf, who have a native language other than English, or who are not proficient in oral or written English language shall have the right to an appropriate interpreter;

(2) The right to request that the participating agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records; and

(3) The right to have a representative of the parent inspect and review the records.

(c) A participating agency may presume that the parent has authority to inspect and review records relating to his or her child unless the participating agency has been given a court order to the contrary.

Std. 340.1904 Record of access

Each participating agency shall keep a record of parties obtaining access to records collected, maintained, or used under Part C (except access by parents and authorized employees of the participating agency), including the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Std. 340.1905 Records on more than one child

If any Part C record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

Std. 340.1906 List of types and locations of information

Each participating agency shall provide parents on request a list of the types and locations of Part C records collected, maintained, or used by the agency. The local lead agency shall establish and maintain a central Part C file for each child referred for and/or receiving services under Part C.

Std. 340.1907 Fees

(a) A participating agency may charge a fee for copies of records which are made for parents under this part if the fee does not effectively prevent the parents from exercising their right to inspect and review those records.

(b) A participating agency may not charge a fee to search for or to retrieve information under this part.

Std. 340.1908 Amendment of records at parent's request

(a) A parent who believes that information in Part C records collected, maintained, or used under this part is inaccurate or misleading or violates the privacy or other rights of the child/family, may

request the participating agency which originally collected or produced the information to amend the information.

(b) The participating agency shall decide whether to amend the information in accordance with the request within 15 working days of receipt of the request.

(c) If the participating agency decides to refuse to amend the information in accordance with the request it shall inform the parent of the refusal, and advise the parent of the right to a hearing under 34 CFR 300.568 and the right to include an explanation of their objection to any information in the record without having to go to a hearing, and that the objection will be treated in accordance with Std. 340.1910(c).

Std. 340.1909 Opportunity for hearing

The participating agency shall, on request, provide an opportunity for a hearing to challenge information in its Part C records to insure that it is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child/family.

Std. 340.1910 Result of hearing

(a) If, as a result of the hearing, the participating agency decides that the information is inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child/family, it shall amend the information accordingly and so inform the parent in writing.

(b) If, as a result of the hearing, the participating agency decides that the information is not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the child/family, it shall inform the parent of the right to place in the Part C record a statement commenting on the information or setting forth any reasons for disagreeing with the decision of the agency.

(c) Any amendment or explanation of objection placed in the Part C record under standards 340.1908 or 340.1910 must:

(1) Be maintained by the participating agency as part of the Part C record as long as the record or contested portion is maintained by the participating agency; and

(2) If the Part C record or the contested portion has previously been disclosed by the participating agency to any third party, the amended record or explanation of objection must also be disclosed to the third party. In the event of future releases to any third party, the amended record shall substitute for, or the explanation of objection shall accompany, the contested portion of the Part C record.

Std. 340.1911 Hearing procedures

A hearing held under Std. 340.1909 of this subpart must be conducted according to the procedures under FERPA (34 CFR 99.22), except that the time from receipt of request for hearing to a written decision shall not exceed 30 days.

Incorporation of this provision of Part B does not run counter to the concept of no parent override in Part 1C. The intent of this provision is to require participating agencies to specify the procedures they will use when the parent refuses consent to release information from the Part C file, including documentation and periodic parent contact regarding reconsideration of the refusal.

Std. 340.1912 Consent

(a) A written request must be made and written parental consent must be obtained before personally identifiable information is:

(1) Transferred from another record maintained by a participating agency to the Part C record maintained by that agency;

(2) Disclosed to anyone other than officials of participating agencies collecting or using the information under this part, subject to paragraph (b) of this section; and/or

(3) Used for any purpose other than meeting a requirement under Part C Infant and Toddler Early Intervention System.

(b) A participating agency subject to the Family Educational Rights and Privacy Act (FERPA) (34 CFR Part 99) may not release information from its Part C record to other participating agencies without parental consent unless authorized to do so under 34 CFR Part 99.

(c) The participating state agencies shall include policies and procedures in the interagency agreement which are used in the event that a parent refuses to provide consent under this section.¹

Std. 340.1913 Safeguards

- (a) Each participating agency shall protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.
- (b) One official at each participating agency shall assume responsibility for insuring the confidentiality of any personally identifiable information.
- (c) All persons collecting or using personally identifiable information must receive training or instruction regarding the State's policies and procedures under the Part C Interagency agreement and FERPA (34 CFR Part 99).
- (d) Each participating agency shall maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

Std. 340.1914 Destruction of information

- (a) The local lead agency shall inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide Part C services to the child and/or family.
- (b) The information must be destroyed at the request of the parents. However, a permanent record of a child's name, address, and phone number, attendance record, and year services were terminated may be maintained without time limitation.
- (c) 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 the Part C record.

Std. 340.1915 Enforcement

To insure compliance with Part C confidentiality requirements, the lead agency with the assistance of other state agencies will monitor all service providers. As the term "service provider" is used in this paragraph, it is intended to encompass all entities subsumed under the Procedural Safeguard Standards' definition of "participating agency" set forth in Standard 340.1901. If a service provider fails to comply with Part C confidentiality requirements, the service provider shall submit a remediation plan with periodic evaluations of progress in remediation. Technical assistance may be provided to assist the service provider in coming into compliance. If the service provider does not comply with remediation plans, the following sanctions may be employed as identified in the State Interagency Agreement:

- (1) The service provider may be determined ineligible for future Part C funding;
- (2) Contract termination provisions may be exercised to terminate, in whole or in part, contracts with the service provider;
- (3) In appropriate circumstances, contracts may be suspended, in whole or in part, and future Part C payments may be withheld.

NOTICE/NATIVE LANGUAGE

Std. 340.1920 Prior notice

- (a) **General** Written prior notice must be given to the parents of a child eligible under this part 7 calendar days before a public agency or service provider proposes or refuses to initiate or change the identification, evaluation, or placement of the child, or the provision of appropriate early intervention services to the child and the child's family. A "public agency" includes the lead agency and any other political subdivision of the state that is responsible for providing early intervention services to children eligible under Part C and their families.
- (b) **Content of notice** The notice must be in sufficient detail to inform the parents about:
- (1) the action that is being proposed or refused;
 - (2) the reasons for taking the action; and
 - (3) all procedural safeguards that are available under this part.

Std. 340.1921 Notice of referral

The local lead agency must notify the parent of a referral for possible Part C services and request permission for evaluation within 10 calendar days of the receipt of the referral by a participating agency.

Std. 340.1922 Native language

- (a) **Native language**, when used with reference to persons of limited English proficiency, means the language or mode of communication normally used by the parent of a child eligible under Part C.
- (b) The notice must be:
- (1) Written in language understandable to the general public; and
 - (2) Provided in the native language of the parents, or other mode of communication.
- (c) If the native language or other mode of communication of the parent is not a written language, the public agency, or designated service provider, shall take steps to ensure that:
- (1) The notice is translated orally or by other means to the parent in the parent's native language or other mode of communication;
 - (2) The parent understands the notice; and
 - (3) There is written evidence that the requirements of this paragraph have been met.
- (d) If a parent is deaf or blind, or has no written language, the mode of communication must be that normally used by the parent (e.g., sign language, Braille, or oral communication) and the parent shall have the right to an appropriate interpreter and explanation of the notice by a professional staff person.

Std. 340.1923 Waiver of timelines

Timelines for notice to parents may be contracted or extended for a specific period of time by the mutual consent of the parent and public agency/service provider. Such consent shall be documented by the public agency/service provider.

CONSENT

Std. 340.1930 Consent

- (a) As used in this subpart "consent" means that:
- (1) The parent has been fully informed of all information relevant to the activity for which consent is sought, in the parent's native language, or other mode of communication;
 - (2) The parent understands and agrees in writing to the carrying out of the activity for which consent is sought, and the consent describes that activity and lists the records (if any) that will be released and to whom:
 - (i) The parent understands any responsibilities the parents or family will bear as a result of the assessment or evaluation (for example, whether the parents must provide transportation, possible impacts on the family from home-based procedures, impacts on insurance limits).; and
 - (ii) The parent understands the financial charges (if any) that they will incur for the services and has explicitly consented to incurring the charges;
 - (3) The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time; and
 - (4) The parent understands that he/she has the right to determine whether the child or other family members will accept or decline some or all Part C service(s), and may decline such a service after first accepting it without jeopardizing remaining Part C services.

Std. 340.1931 Parent consent

- (a) Written parental consent must be obtained before:
- (1) Conducting the initial evaluation and assessment of a child and any subsequent reevaluation. Written consent shall not be required for ongoing assessment, i.e., day to day observations of the child/family's progress after the initial evaluation/assessment and implementation of the initial IFSP;
 - (2) Implementing the provision of Part C services for the first time (i.e., at the time that the initial IFSP is developed) and for any subsequent IFSP; and
 - (3) Release of personally identifiable information pursuant to Std. 340.1912. Parental consent for such release of personally identifiable information must be renewed every six months.
- (b) If consent is not given, the public agency shall make reasonable efforts to ensure that the parent:
- (1) Is fully aware of the nature of the evaluation and assessment or the services that would be available;
 - (2) Understands that the child will not be able to receive the evaluation and assessment or

services unless consent is given; and

(3) Is recontacted to ascertain whether the parent is subsequently willing to provide partial or complete consent for requested Part C activities, unless the parent requests that no further contact be made.

(4) If consent for evaluation and assessment or services is not given and, in the judgment of any of the participating agencies such refusal constitutes abuse or neglect, under State law the agencies are required to report such to Child Protective Services, Department of Social Services, upon which an investigation of same would be initiated.

SURROGATE PARENTS

Std. 340.1935 Surrogates

(a) The designated administrator of the local lead agency shall assign a surrogate to represent the rights of eligible children within ten working days of its determination that one of the following circumstances exists:

(1) When, after documented reasonable efforts including collaborative inquiries through other participating agencies, the local lead agency is unable to identify or locate the parent, guardian, or person acting as parent of a child;

(2) When the child is in the legal custody of a state agency and the parent's rights to participate in Part C decision-making have been terminated. In this case, a foster parent may be designated as surrogate unless he or she indicates or demonstrates an unwillingness or inability to serve as surrogate.

(b) The surrogate shall have the same rights as a parent under these regulations, including the right to consent or withhold consent and to represent the child in all matters pertaining to evaluation, assessment, IFSP development, provision of early intervention services, and any other rights established under IDEA-Part C.

(c) The local lead agency shall maintain a list of approved surrogates and procedures for appointing a surrogate from that list, to be selected in any way permitted by state law.

(1) The local lead agency shall endeavor to appoint a surrogate who will act as an effective advocate, with a preference given to a person who knows and understands the child and the family's cultural, religious, and linguistic background;

(2) The surrogate shall be knowledgeable and trained in the developmental needs, service options, and legal rights of children eligible for Part C services;

(3) A surrogate shall have no interest which conflicts with the child's interests, and shall not be an employee of any participating agency involved in the provision of early intervention or other services to the child. A person who otherwise qualifies to be a surrogate is not an employee solely because of being paid by a participating agency to serve as a surrogate parent.

(d) Any person participating in good faith as a surrogate parent on behalf of the child shall have immunity from civil liability that otherwise might result by reason of such participation, except in cases of willful or wanton misconduct.

(e) A surrogate parent shall be appointed and shall continue to serve until he or she resigns, the appointment is terminated by the local lead agency, or the child is no longer eligible for early intervention services.

ADMINISTRATIVE RESOLUTION OF INDIVIDUAL HEARING ISSUES

Std. 340.1940 Request for hearing

(a) A parent may file a written request for a due process hearing when a public agency or service provider proposes or refuses to initiate or change the:

(1) Identification, evaluation, or placement of an eligible child;

(2) Provision of appropriate Part C services to the child or the child's family; and/or

(3) Assignment of financial obligations for Part C services to the parents.

(b) A written request for hearing shall:

(1) Be signed by the parent or surrogate parent;

(2) Contain the reason(s) for the request; and

(3) Be filed with the state lead agency.

(c) The state lead agency shall confirm receipt of the request for hearing in writing with the parent and all parties involved in the dispute not later than five working days after receipt of the request for hearing.

Std. 340.1941 State lead agency duties

It shall be the responsibility of the state lead agency to:

- (a) Establish a one-tier (i.e., state level) administrative hearing procedure, including:
 - (1) Maintain a pool of hearing officers from diverse backgrounds, i.e., demographic, service provision, education, etc., who meet the qualifications of Std. 340.1943. Maintenance of this hearing officer pool shall include the following:
 - (i) Recruitment;
 - (ii) Initial and periodic training;
 - (iii) Selection; and
 - (iv) Evaluation;
 - (2) Appoint a hearing officer upon receipt of a written parent request for a due process hearing;
 - (3) Notify the parties of their rights in the due process hearing and of the alternatives to a due process hearing, including mediation;
 - (4) Compensate the hearing officer;
 - (5) Provide a court reporter and transcript of the hearing;
 - (6) Maintain a central file of all requests for hearings and subsequent hearing officer decisions; and
 - (7) Make an annual report to the state Interagency Coordinating Council regarding hearing requests and results.
- (b) Establish voluntary and informal alternative dispute resolution procedures to the due process hearing. These alternatives may include mediation, fact-finding, non-binding arbitration, etc.

Std. 340.1942 Parent rights

- (a) **General** The state lead agency shall ensure that the parents of children eligible for Part C services are afforded the rights in paragraph (b) of this section in any administrative proceedings carried out under Std. 340.1940.
- (b) **Rights** Any parent involved in a due process hearing under this Part Cas the right to:
 - (1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to children eligible for Part C services;
 - (2) Present evidence, and confront, cross-examine, and compel the attendance of witnesses;
 - (3) Prohibit the introduction of any evidence at the proceeding that has not been disclosed to the parent at least five days before the proceeding;
 - (4) Obtain a written or electronic verbatim transcription of the proceedings;
 - (5) Obtain written findings of fact and decisions;
 - (6) Be informed of any free or low cost legal services;
 - (7) Receive the assistance of their service coordinator in filing a written request for a due process hearing;
 - (8) Determine whether the due process hearing shall be open or closed;
 - (9) Request an expedited hearing with an oral decision being rendered at the conclusion of the hearing to be followed by a written decision; and
 - (10) Be informed of the right to attorney's fees in the event that the parent is a prevailing party in the due process hearing that involves a Part B eligible infant/toddler.

Std. 340.1943 Qualification and duties of the impartial hearing officer

- (a) Qualifications and duties. An impartial person must be appointed to implement the individual dispute resolution process (i.e., hearing). The person must:
 - (1) Have knowledge about the provisions of IDEA-Part C, and the needs of, and services available for, eligible children and their families; and
 - (2) Perform the following duties:
 - (i) Listen to the presentation of relevant view points about the hearing issues, examine all information relevant to the issues, and seek to reach a timely resolution of the hearing issues; and
 - (ii) Render a written decision, including a record of the proceedings.
- (b) Definition of impartial:
 - (1) As used in this section, "impartial" means that the person appointed to serve as a

hearing officer:

- (i) Is not an employee of any agency or other entity involved in the provision of Part C services or care of the child; and
 - (ii) Does not have a personal or professional interest that would conflict with his or her objectivity in implementing the process.
- (2) A person who otherwise qualifies under paragraph (b)(1) of this section is not an employee of an agency solely because the person is paid by the state lead agency to serve as a hearing officer.

Std. 340.1944 Convenience of proceedings; timelines

- (a) The due process hearing must be carried out at a time and place that is reasonably convenient to the parents.
- (b) The state lead agency shall ensure that not later than 30 calendar days after the receipt of a parent's request for hearing, the impartial due process hearing shall be completed and a written decision mailed to each of the parties.

Std. 340.1945 Mediation

- (a) Any party to a disputed Individualized Family Services Plan (IFSP) or any party to a hearing, before the hearing, may file a written request for mediation with the state lead agency in which the relief sought consists of a mutually agreeable settlement between the parties:
 - (1) This request must be signed and dated by the parent and all other affected parties; and
 - (2) The service coordinator may assist the parent in filing the written request for mediation.
- (b) The mediator or the mediation service shall be subject to the mutual agreement of the parties, except that:
 - (1) The same person shall not mediate and hear the same dispute; and
 - (2) The mediator shall not serve as a witness in any subsequent due process hearing nor as a member of the IFSP committee with respect to the specific dispute presented for mediation.
- (c) The mediation shall have no effect on the normal progress of the case toward a hearing, except in accordance with Std. 340.1940, et seq.
- (d) If the parties reach agreement during the mediation, the mediator shall assist the parties to prepare the agreement in writing. Within 5 working days after the agreement is signed by both parties, an Individualized Family Service Planning Committee shall be convened to incorporate the agreement into the Individualized Family Service Plan.
- (e) If an agreement is not reached during the mediation, the dispute shall be subject to the procedural safeguards set forth in Std. 340.1940, et seq.
- (f) Parents are not required to use the mediation process. Mediation may not be used to deny or delay a parent's rights. The complaint must be resolved, and a written decision must be made within thirty days.

Std. 340.1946 Civil action

Any party aggrieved by the findings and decision rendered by the administrative hearing officer has the right to bring a civil action in state or federal court pursuant to Section 680(1) of IDEA-Part C.

Std. 340.1947 Status of child during proceedings

- (a) During the pendency of any proceeding involving a hearing under this subpart, unless the public agency and the parents of a child otherwise agree, or the parents withdraw consent, the child must continue to receive the early intervention services currently being provided.
- (b) If the hearing involves an application for initial services under this part, the child must receive those services that are not in dispute.

COMPLAINT PROCEDURES

Std. 340.1950 Subject of Complaint

- (a) An individual or organization may file a dated and signed written complaint with the state lead agency alleging noncompliance with IDEA-Part C and/or federal and state implementing regulations not the subject of a hearing under Std. 340.1940, et. seq.
- (b) The service coordinator or Part C coordinator may assist a parent in preparing and filing such

a complaint.

(c) The complaint must state the facts upon which the alleged violation is based.

Std. 340.1951 Procedure

(a) The lead agency shall:

(1) Upon the receipt of a complaint, investigate as appropriate, including on-site investigation as needed;

(2) Resolve any complaint within its jurisdiction within 60 days of receipt, unless extraordinary circumstances require additional time for investigation or resolution;

(3) Render a written decision which includes a summary of the relevant evidence, any appropriate findings of fact and conclusions of law, a determination as to the merit of each element of the complaint, and any orders for prompt resolution of the complaint;

(4) Maintain a central file of complaints and decisions, which shall be a public record with the exception of personally identifiable information;

(5) Shall see that the information is promptly implemented;

(6) Inform the parties of their right to request the U.S. Secretary of Education to review the final decision of the state lead agency.

(b) Confidentiality. If the complainant is not the parent of the involved child, the state lead agency will notify the parent or attempt to get the permission of the parent to release personally identifiable information. If the parent does not grant that permission, the state lead agency will investigate the complaint, but will not divulge any personally identifiable information to the complainant. This confidentiality requirement cannot interfere with the right to file a complaint or the duty of the state lead agency to investigate the complaint.

(c) Nothing in these rules shall prohibit the informal resolution of a complaint.



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