



200 West Baltimore Street, Baltimore, Maryland 21201

Technical Assistance Bulletin

MarylandPublicSchools.org



Division of Early Intervention and Special Education Services | Bulletin # 19-05

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Date: November 2019

Improving Results for Children: The Sharing of Child/Student Early Intervention and Special Education Information for “Legitimate Educational Interests”

Maryland has established the use of a unique student identifier for all children and youth determined to be eligible for early intervention services and special education and related services, birth through twenty-one years of age. The unique student identifier is provided to each child/student when the initial Individualized Family Service Plan (IFSP) or Individualized Education Program (IEP) goes into effect. The unique student identifier is maintained for the child/student throughout their early intervention/educational experience. This system allows for longitudinal monitoring of the progress each child/student makes, enhances individual intervention/instructional planning, and enhances system-wide local program improvement planning and implementation.

With the expansion of the statewide electronic data collection and analysis systems, it is critical for local infants and toddlers program staff, local school system staff, and parents to have a clear understanding of the circumstances under which it is permissible to share early intervention/educational information without written parent consent, while maintaining federal and State confidentiality requirements and protections. For the purpose of “legitimate educational interests,” the data that is shared, without parental consent, may include child/student information maintained in an early intervention/educational record or a database. Dependent upon the local agency/school system involved and the level of access, this data may include personally identifiable child/student information or summary level information with no link to personally identifiable information.

1. **What are the Legal Requirements and Protections?**

The *Individuals with Disabilities Education Act of 2004* ensures the protection of the confidentiality of personally identifiable information collected, used or maintained as well as for the disclosure of such information (20 U.S.C. §1417(c), 34 C.F.R. §300.623(a)). Each participating agency under IDEA 2004 must identify one official who “shall assume responsibility for ensuring confidentiality of any personally identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the State’s policies and procedures and must maintain a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information” (34 C.F.R. §300.572).

In implementing Part B of the IDEA 2004, Maryland “assure[s] a free appropriate public education (FAPE) for all students with disabilities, *birth through the end of the school year in*

which the student turns 21 years old, in accordance with the student’s Individualized Education Program (IEP)” (Md. Code Ann., Educ. 8-301 *et seq* & 8-401 *et seq*; COMAR 13A.05.01.01). Maryland is one of only five states that assures FAPE beginning at birth and therefore maintains responsibility for conformity with protection of confidentiality and disclosure of personally identifiable information for each child from birth through the end of the child’s educational experience.

Under the *Family Educational Rights and Privacy Act of 1974*, 20 U.S.C. 1232g, 34 C.F.R. §99 (FERPA), and COMAR 13A.08.02.19, personally identifiable information from an education record may be disclosed without parent consent if the disclosure is to other school officials, including teachers, when the institution or agency has been determined to have ***legitimate educational interests***.

The Maryland Public Information Act (PIA) specifies that the custodian of educational records must permit inspection by an elected or appointed official who supervises the student. If a local school system maintains student records, the official who supervises the student, or his designee, must have access to those records. (Md. Code Ann., General Provisions Art. §4-313(b))

The Maryland State Interagency Agreement of 2007 (§I.13.0) provides for the exchange of information between the participating State agencies necessary for the provision of early intervention services at the local level and as consistent with applicable federal laws (COMAR 13A.13.01.11C).

2. What are “legitimate educational interests?”

Legitimate educational interests pertain to the use of early intervention/educational information for the purpose of improving early intervention/educational services for individual children currently served through a local program, as well as for broader program improvement when prior or current individual child performance information can be used to improve implementation of the local early intervention or special education service delivery system.

3. Who are participating agencies in the exchange of child/student information for legitimate educational interest?

For Part C, participating agencies at the State level include, but are not limited to: Maryland State Department of Education, Department of Health and Mental Hygiene, and Department of Human Resources. For Part C at the local level, participating agencies include but are not limited to: local public schools including Judy Centers, health departments, departments of social services, Maryland School for the Deaf, Maryland School for the Blind, and private agencies through interagency agreements or contracts. For Part B, participating agencies include any public or private agencies serving as an educational agency.

4. Do the federal and State regulations and protections apply to the designated Lead Agency (LA) for the Local Infants and Toddlers Program (LITP) regardless of whether the LA is the local school system, local Department of Health, or another local government entity?

The IDEA, FERPA, the Maryland PIA, and the Maryland State Interagency Agreement of 2007 all apply to the sharing of child and student information for legitimate early intervention/educational purposes regardless of which local agency is the designated lead agency for the Local Infants and Toddlers Program. In addition, FERPA provisions related to a

State's responsibilities under IDEA for Child Find permit the sharing of information from an early intervention/educational record of a student without parent consent: a) where the student will be enrolled as long as the disclosure is for purposes related to the student's enrollment or transfer; and, b) if the student receives services from the local school system and the public agency, and if the disclosure of the records would comply with child find or other federal requirements (34 CFR §99.31(a)(2); 34 CFR §99.31(a)(3)(iv)).

5. *What are the implications of sharing early intervention/educational information for children/students in Maryland?*

The sharing of child/student information for legitimate education purposes:

- Enables longitudinal monitoring of child progress supports a seamless system of services and instructional planning, birth through 21 years of age;
- Creates a "safety net" for children and families that participated in the early intervention system; and
- Promotes a collaborative approach to planning for and serving children and youth with disabilities and their families among human services agencies, and informs system-wide improvement planning and implementation.

6. *If a parent terminates their child's participation in early intervention or special education services what implications does this have regarding sharing of information?*

Termination of services does not affect the disclosure of information. The sharing of information is still permissible if a legitimate educational interest exists.

7. *What type of child/student information can a Local Infants and Toddlers Program (LITP) Director access when the child/student transfers from the LITP program to the school system in the LITP's jurisdiction?*

The amount of access will depend on whether the LITP Lead Agency is the local school system or another agency, such as a local health department. When an LITP director seeks information on how a child is doing in kindergarten and later grades, MSDE refers to this as 'forward access.' When student records have personally identifiable information, these records may not be released without written consent unless the release is allowed by law. Records that do not have personally identifiable information may be released without consent.

A local school system LITP Director may have "forward access" to educational information after the student leaves the LITP and is currently enrolled in the local school system in the LITP's jurisdiction. This "forward access" to student specific information requires the local school system to determine that the LITP Director has a legitimate educational interest, such as improvement of services, etc. When the LITP Director has a legitimate educational interest, the LITP Director may access student specific information (i.e. records that have personally identifiable information) without written parent consent, as this is one of the exceptions to the written consent requirements. See 34 C.F.R. sec. 99.31(a)(1).

If the designated Lead Agency for the LITP is the local health department or other agency, such as a LITP Director can have "forward access" to summary level information only. The LITP Director may not have "forward access" to personally identifiable information linking a specific child to specific information. The LITP Director will not be able to access records of a particular child after the child leaves the LITP.

Access to child/student information by the LITP Director (forward access)

ITP Local Lead Agency	Access for Legitimate Educational Interest	
	Personally Identifiable Information	Summary Level Information
Education	✓	✓
Health Department		✓
Non-Profit Agency		✓

8. What type of child/student information can a local Special Education Director access?

The local Special Education (SE) Director can have “backward access” to all educational information (both personally identifiable and summary level information) on a child who is currently receiving special education services in their local jurisdiction and who was previously enrolled in the Infants and Toddlers Program within and across jurisdictions.

Access to child/student information by the SE Director (backward access)

ITP Local Lead Agency	Access for Legitimate Educational Interest	
	Personally Identifiable Information	Summary Level Information
Education	✓	✓
Health Department	✓	✓
Non-Profit Agency	✓	✓

9. May a local provider of early intervention services for a child who has transitioned to the local school system preschool special education program and who is interested in knowing what educational progress the child has made since the transition from an IFSP to an IEP have access to the child’s current IEP and progress data?

No. While it is understandable for a former provider of services to have continued interest in the progress a child has made since receiving early intervention services under an IFSP. However, under these circumstances, the provider’s access to information on the child’s current educational progress is of a personal nature, and does not constitute legitimate educational interest. While the continued interest by the provider is commendable, access to the current information for the child is not permissible.

10. Can educational information for a child receiving services under an IFSP be accessed by the local school system Judy Center Director?

The LITP is one of the required partners in local Judy Centers. If a child who is receiving services under an IFSP, through the local Infants and Toddlers Program, is participating in the local Judy Centers’ services and/or programs, then the local school system Judy Center Director would be considered as having *legitimate educational interests* and could have access to the child’s educational information for the purpose of improving intervention and instructional practices and services. The LITP Director/Service Coordinator would work closely with the Director of the Judy Center to assure access to the child’s intervention information, consistent with the collaborative mission of the Judith P. Hoyer Initiative and Judy Centers.

11. Can the Program Director of a Local Head Start Program have access to educational information on a child previously served through the LITP under an IFSP, who is currently receiving services through the local Head Start Program under an IEP?

The Director of a Local Head Start Program can have access to educational information on a child who previously received early intervention services in their LITP, who is currently enrolled in the Head Start Program and is receiving special education and related services under an IEP, if the purpose of such access is to improve instructional planning and/or local program improvement planning and implementation. Under these circumstances, the Head Start Program Director is considered to have legitimate educational interests in this information, and written parent consent is not required.

12. Can the Director of Special Education for the local school system have access to educational information on a child previously served through the local Early Head Start Program under an IFSP, who is currently receiving services through the local school system under an IEP?

The Director of Special Education can have access to educational information on a child who was enrolled in the local Early Head Start Program, who previously received early intervention services under an IFSP, and is currently receiving special education and related services under an IEP, if the purpose of such access is to improve instructional planning and/or local program improvement planning and implementation. Under these circumstances, the local Director of Special Education is considered to have legitimate educational interest in this information, and written parent consent is not required.

13. If a child/student receiving services under an IFSP or IEP moves to another jurisdiction, what are the implications regarding the sharing of developmental/educational information?

If the child in a program/school plans to move to a new program/school, the original program/school can share information with the new program/school without parental consent, assuming proper notice was given to parents. The agency that discloses the information to another program/school must make a reasonable attempt to notify the parent of the disclosure unless: (1) the disclosure is initiated by the parent or eligible student; or (2) the annual notification of the agency includes a notice that the agency forwards records to other agencies that have requested the records and in which the child/student seeks to enroll or participate (34 C.F.R. § 99.34(1)). After the child is in the new program/school, data sharing with the original program/school would require parental consent unless the information is directory information, the child is returning to the original program/school, or other exception.

NOTE: The information contained in this technical assistance bulletin pertains to children who have been found eligible for early intervention services under Part C, or for special education and related services under Part B. Written parent permission is still required prior to the gathering of assessment information, formal and informal, needed for the determination of the child's eligibility for early intervention or special education and related services.

For more information, call 410-767-0249
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