



**POLICIES AND PROCEDURES
NEW JERSEY EARLY INTERVENTION SYSTEM**

No: NJEIS-01	Subject: Sharing Information Relative to Child Abuse or Neglect Investigations
Effective Date: April 17, 2017	Responsible Party: Procedural Safeguards Coordinator

I. Purpose

To aid the Division of Child Protection and Permanency (DCP&P) and the Institutional Abuse Investigation Unit (IAIU) within the Department of Children and Families (DCF) in the provision of NJEIS services to children served by DCF, the investigation of suspected child or abuse neglect cases while complying with the privacy rights that early intervention records are afforded under the Family Educational Rights and Privacy Act (FERPA). 20 U.S.C. § 1232g.

II. Policy

- A. All early intervention records – that is, hand written, print, computer media, video or audio recordings, and other materials containing information directly related to the child and family – maintained by the NJEIS are protected by FERPA.
- B. DCP&P or IAIU is not entitled to a blanket disclosure of information – early intervention records – by the NJEIS. In the case of an emergency disclosure, the NJEIS may only disclose information relevant to the particular and present case of suspected child abuse or neglect DCP&P or IAIU has alleged in its facts and explanation.
- C. Under FERPA, the NJEIS must obtain written informed consent from a parent – that is, a biological or adoptive parent, a foster parent, a guardian, or an individual acting as a parent in the absence of a parent or guardian – of a child under eighteen (18) years of age before disclosing early intervention records to a third party. However, FERPA includes exceptions to the parental consent requirement.
- D. Pursuant to N.J.S.A. 9:6-8.40, New Jersey state law requires “all public and private institutions or agencies” to provide to DCP&P “any records, past and present, pertaining to that child” to conduct efficient investigations and accordingly, when the NJEIS or contracted agencies are in receipt of a Request for Information Pursuant to N.J.S.A. 9:6-8.40, the NJEIS and/or contracted agencies referenced in the request shall supply the specific records requested.

- E. FERPA at 34 CFR 99.31 (a)(10) and 99.36 (a)-(c) makes an exception to the parental consent requirement in an emergency where the information is necessary to protect the health and safety of a child.
- F. A suspected case of child abuse or neglect may qualify as an emergency under which the NJEIS may disclose early intervention records to DCP&P or IAIU – a third party – without parental consent.
- G. Any requests for early intervention records from DCP&P or IAIU – a third party – without parental consent shall be forwarded to the NJEIS Procedural Safeguards Office within 24 hours of receipt.

III. Procedures

- A. Pursuant to N.J.S.A. 9:6-8.40, New Jersey state law which requires “all public and private institutions or agencies” to provide to DCP&P “any records, past and present, pertaining to that child” to conduct efficient investigations and accordingly, when the NJEIS or contracted agencies are in receipt of a Request for Information Pursuant to N.J.S.A. 9:6-8.40, the NJEIS and/or contracted agencies referenced in the request shall supply the specific records requested.
- B. In the event that a Request for Information is not provided, a request for emergency disclosure based on a suspicion of child abuse or neglect must be initiated by DCP&P or the IAIU by notifying the NJEIS Procedural Safeguards Office that a formal request for emergency disclosure is forthcoming.
- C. Upon notice of a forthcoming request for emergency disclosure, the Procedural Safeguards Coordinator or her/his designee will supply DCP&P or IAIU with a written statement sufficient to put DCP&P or IAIU on notice of the FERPA disclosure rules.
- D. DCP&P or IAIU must sign and return a statement, provided in the written statement from the Procedural Safeguards Office in C. above, to the NJEIS acknowledging that DCP&P is on notice of the FERPA disclosure rules. The NJEIS shall not accept a formal request for emergency disclosure prior to receiving such an acknowledgment from DCP&P or IAIU.
- E. A request for emergency disclosure of early intervention records maintained by the NJEIS to DCP&P or IAIU, based on suspected child abuse or neglect, must meet the following requirements:
 - 1. DCP&P or IAIU must demonstrate – to the satisfaction of the NJEIS – that there is a serious threat to the health or safety of the child in question. Thus, DCP&P or IAIU must present the NJEIS with a signed, written request for information that constitutes a summary of the discrete facts that caused DCP&P or IAIU to reasonably believe that the child in question is indeed *presently* a child that is the subject of child or neglect.
 - (a) If the summary is developed based upon observations made by:
 - (i) A DCP&P or IAIU employee, the stated facts within the summary must be reliable in that:
 - (a) They must have been personally observed by the actual employee drafting the request.

- (b) The employee drafting the request must also attest that, to the best of her/his knowledge, the facts in the request are reliable. The employee's signature is required; the NJEIS will not consider a request that lacks the signature of the drafter attesting to the reliability of the facts DCP&P or IAIU is presenting to the NJEIS.
 - (ii) An individual other than a DCP&P or IAIU employee, the stated facts within the summary must be reliable in that:
 - (a) They must have been personally observed or noted by the individual(s) reporting them to the DCP&P or IAIU employee drafting the request.
 - (b) A direct supervisor must attest to the reliability of the facts. The signature of a supervisor is mandatory; the NJEIS will not consider a request that lacks the signature of a supervisor attesting to the reliability of the facts DCP&P or IAIU is presenting to the NJEIS.
 - 2. If any of the facts DCP&P or IAIU presents to the NJEIS in its fact summary are contained and confirmed in written documents in the possession of DCP&P, DCP&P must attach copies of such documents to its request for disclosure. Failure to do so will result in the rejection of the request.
 - 3. If any of the facts DCP&P or IAIU presents to the NJEIS in its fact summary have merely been communicated by oral statement, the individual(s) making the statement(s) must reduce the oral statement to a signed writing, which is to be attached to DCP&P's or IAIU's request for disclosure. Failure to do so will result in the rejection of the request.
 - 4. DCP&P or IAIU must provide a written statement that clearly and unambiguously explains why the facts DCP&P or IAIU has provided the NJEIS form the basis of a reasonable belief that the child in question is being abused or neglected. Any clinical terminology used by DCP&P or IAIU in its explanation must be presented in a manner such that an ordinary layperson would comprehend the concepts DCP&P or IAIU has set forth as the basis for its belief that the child in question is being abused or neglected.
 - (a) The NJEIS will determine whether the explanation provided by DCP&P or IAIU is presented with sufficient clarity. If the NJEIS determines that the explanation is unclear, the NJEIS has discretion to reject the request.
 - (b) The NJEIS will determine if the explanation DCP&P or IAIU provides is sufficiently persuasive. If the NJEIS determines that the explanation is unpersuasive, the NJEIS has discretion to reject the request.
- F. DCP&P or IAIU must provide the NJEIS with a written, signed statement containing all of the following elements:
- 1. A list of the specific documents maintained by the NJEIS – and protected by FERPA – which DCP&P or IAIU believes are necessary to fully investigate and resolve the particular and present case of suspected child abuse or neglect.
 - 2. DCP&P or IAIU must clearly explain the relevance of each requested document to the investigation and resolution of the present suspected case of child abuse or neglect.

- (a) DCP&P or IAIU must explain, with particularity, how each requested document is material to investigating and resolving the suspected case of child abuse or neglect.
 - (b) DCP&P or IAIU must explain, with particularity, how the content of each document, if disclosed:
 - (i) Would help to confirm or rebut the suspicion that the child is being abused or neglected.
 - (ii) Would help DCP&P or IAIU in its resolution of the case.
 - (c) This statement must be signed by the DCP&P or IAIU employee drafting it.
- G. After reviewing a request for emergency disclosure, the NJEIS has full discretion to grant such a request if it satisfies the federal emergency disclosure exception for early intervention records protected under FERPA. *See* 20 U.S.C. § 1232g(b)(a)(1); 34 C.F.R. §§ 99.31 (a)(10), 99.36(a-c).
- 1. The NJEIS has discretion to grant or reject the list of requested documents provided by DCP&P or IAIU in whole or in part if the NJEIS reasonably believes that granting the request for disclosure, in whole or in part, would not satisfy the federal emergency disclosure exception for educational records protected by FERPA. *See* 20 U.S.C. § 1232g(b)(1)(I); 34 C.F.R. §§ 99.31(a)(10), 99.36(a-c). The NJEIS is not obligated to provide DCP&P or IAIU a reason for rejecting a request for a specific document.
 - 2. If, after review, a request for emergency disclosure is denied by the NJEIS, the NJEIS may provide DCP&P or IAIU with a brief written statement explaining the defects in the request, if any, and how they may be cured. An explanation need only be provided if the NJEIS deems such an explanation appropriate, given the circumstances of the request.
- H. Requests for early intervention records from DCP&P or IAIU – a third party – without parental consent shall be transmitted to the Procedural Safeguards Office within 24 hours of receipt.

IV. Related Policies and Procedures