

CHAPTER 4

The Organizational Perspective

INTRODUCTION

Large and small organizations can benefit from developing assessment practices and policies to effectively utilize existing resources, including funding. Chapter Four focuses on assessment issues at three levels: (a) state, (b) regional or local, and (c) individual organizations. Examining assessment issues with an organizational perspective will help to support the establishment of a coordinated system of assessment services, improve system capacity, foster interagency cooperation, streamline the delivery of assessment services, and deliver quality assessment services at the individual level.

This chapter also includes a number of resources, including sample forms and templates, to assist organizations and collaboratives in addressing legal issues, ethics and fairness in assessment, privacy and confidentiality, information and data sharing, interagency collaboration, resource mapping, and decision-making.

THE CURRENT SITUATION

Workforce development services vary extensively across states and communities. These services may be provided by community-based organizations, publicly and privately funded education and training providers, unions or labor councils, employer groups, and/or professionals in private practice. Variations in services and providers create a particularly challenging context for the provision of assessment services to youth, especially at-risk populations such as youth with disabilities.

Publicly-funded organizations, both state and local, charged with providing assessment services find that they must navigate a complex maze of laws, regulations, and policies in order to make decisions about these services. Assessment decisions are further constrained by funding concerns, lack of knowledge of available assessment resources, staff inexperience with certain assessments or types of assessment tools, privacy protections, and reporting and evaluation requirements. However, assessment forms the basis

upon which educational, vocational, and employment planning decisions may be made. Also, assessment promotes self-knowledge and awareness of post-secondary options and opportunities for youth.

Federal legislation related to transition provides an impetus for convening stakeholders and service providers at the state and local levels to improve workforce development services to job seekers and employers. But because of an emphasis on local decision-making, implementation of services varies from state to state and community to community. Variations in local philosophy, workforce priorities, resources, and other environmental factors affect the decision-making process. Mandated partners struggle to meet the spirit of the laws while complying with sometimes conflicting policy guidelines for their pieces of the workforce development puzzle.

Appendix A summarizes the mandated and permitted assessments under several laws governing mandated and some non-mandated partners under the Workforce Investment Act. (Mandated assessments are those required for all applicants or participants. Permitted assessments may be provided for some applicants or participants if appropriate under certain circumstances.) Collectively the assessments have a number of purposes and may fall into any of the four domains of assessment: educational, vocational, psychological, or medical. There are both gaps and overlaps among the laws, but a clear possibility to establish common strategies is obvious.

The common measures required under the President's 2001 Management Agenda (described in Chapter Three) are an attempt to bring order to the outcome measurements of federal job training and employment programs. Agencies beginning implementation of the common measures may find the change provides an opportune time to collaborate on developing a cross-agency infrastructure to expand and bring greater efficiency to assessment services in a state or locality.

BUILDING AN ASSESSMENT INFRASTRUCTURE

Collaborative, cross-agency cooperation (both statewide and in local communities) is becoming necessary to maximize available expertise and to leverage funding for youth service delivery. Resource

mapping, a type of environmental scanning, is a useful means of identifying, recording, and disseminating related resources and services that comprise this delivery system. By detailing current capacities, needs, and expertise, an organization or group of organizations can begin to make strategic decisions about ways to broaden their collective assessment capacity. The beginning point can be to identify providers of assessment services and their purposes in doing so. According to Crane and Skinner (2003):

Resource Mapping focuses on what states and communities have to offer by identifying assets and resources that can be used for building a system. It is not a "one-shot" drive to create a published list or directory, but rather a catalyst for joint planning and professional development, resource and cost sharing, and performance-based management of programs and services.

Resource mapping also allows states and communities to identify service gaps and service overlaps. This information is essential to aligning assessment services and for strategic planning. Exhibit 4.1 provides a sample format for conducting a resource mapping scan.

The resource mapping process may also reveal agencies or organizations with expertise in particular areas that partner agencies may wish to access. For example, partners may wish to draw on the expertise of the state department of education in developing assessment accommodation guidelines that will ensure consistency across agencies. An additional resource for accommodations is the Council of Chief State School Officers' *Accommodations Manual: How to Select, Administer, and Evaluate Use of Accommodations for Instruction and Assessment of Students with Disabilities* (Thompson, Morse, Sharpe, and Hall, 2005) which provides step-by-step guidelines for assessing and students with disabilities on statewide academic assessments that may be applicable to career assessments. A number of resources are included such as a policy framework flow chart and detailed information on types of accommodations based on student characteristics. The manual is available at http://www.ccsso.org/projects/scass/Projects/Assessing_Special_Education_Students/.

Once the organizations providing assessment services are identified and a plan evolves to align assessment

services, understandings or agreements between agencies will need to be developed to ensure that assessment services are provided as planned. Formal interagency agreements are not new, but to date there is little evidence that they have been used to build common assessment infrastructures or that it is possible to build upon these interagency agreements to “zero in” on assessment issues. Agencies who are party to these agreements will be breaking new ground in the alignment and provision of assessment services.

FORMALIZING INTERAGENCY AGREEMENTS

When state agencies and organizations work together for common causes, formal relationships can be formed to ensure that there is agreement about who is doing what and how services will be funded. Several states have interagency transition entities whose members collectively decide how they can best work together, including when and how assessments will be provided. Some of these interagency transition groups have formal, written agreements that delineate specific responsibilities for each agency.

For example, in Minnesota, the state legislature has enacted the Minnesota System of Interagency Coordination (MnSIC) designed to encourage partnerships among groups serving youth with disabilities from birth to young adulthood. MnSIC provides guidance and leadership on a statewide level with representatives from state agencies (Education, Economic Security, Commerce, Corrections, Health, Human Rights, and Human Services) and statewide associations representing counties, nurses, school boards, and special education administrators. On the local and regional level, Community Transition Interagency Committees (CTIC’s) comprised of various stakeholders in the transition process (including youth) meet regularly to

- identify current services, programs, and funding sources provided within the community for secondary and postsecondary-aged youth with disabilities and their families;
- facilitate the development of multi-agency teams to address present and future transition needs of students in their Individualized Education Programs;

- develop a community plan to include mission, goals, and objectives, and an implementation plan to assure that transition needs of individuals with disabilities are met;
- recommend changes or improvements in the community system of transition services;
- exchange agency information such as appropriate data, effectiveness studies, special projects, exemplary programs, and creative funding of programs; and
- prepare a yearly summary assessing the progress of transition services in the community, including follow-up, to determine post-school outcomes for individuals with disabilities who were provided transition services (Minnesota System of Interagency Coordination, 2003).

Through the work of interagency committees or teams such as these, a regional plan can be developed to foster and advance assessment resources and practices and provide information to stakeholders. By establishing a list of commonly used assessments and providing assessment services in a coordinated manner, youth-serving organizations can provide high quality services efficiently.

When organizations or groups formally plan to coordinate services or form collaborative enterprises, a legal document called a Memorandum of Understanding (MOU) is often drawn up to detail the work and fiscal responsibilities of participating parties. Such documents may also be referred to as Service, Resource Sharing, or Governance Agreements. These agreements include details regarding who is providing what services, how much they will cost, who is paying for them, where they will be delivered, and additional information as needed.

The MOU can also contain agreed-upon policies and procedures, such as the written service plan based on the WIA Section 188 Disability Checklist that contains guidelines on universal access, accommodations, confidentiality, and other nondiscrimination issues. An MOU should be flexible but clear about responsibilities and should be amendable when new issues arise or new service providers become available. Table 4.1 lists the elements commonly found in MOUs and discusses assessment issues that should be considered for inclusion in an MOU.

Funding

When organizations agree to work together, deciding who will pay for assessments is complicated as funding is generally tied to individual participants who meet specific eligibility criteria. Because some assessments can be very expensive, clear criteria for expenditures are needed. Explicit processes should ensure that (a) prior assessments are reviewed and used if appropriate and up-to-date; (b) maximum use is made of the expertise within each agency (e.g., a

rehabilitation counselor's knowledge of disability-related assessments or availability of certified vocational evaluators in the area); and (c) cost-sharing options are explored across the range of assessments needed. Regulations and policies regarding funding must be detailed from the start through the resource mapping exercise in order to promote clarity, eliminate confusion, and avoid duplication or gaps in services for targeted youth.

TABLE 4.1: MEMORANDA OF UNDERSTANDING COMPONENTS

The components of an MOU will vary according to its purpose, the needs of the signatory parties, and regulatory requirements. The following list, geared towards assessment, was compiled from a wide variety of MOUs, none of which contained every item listed below.

□ Basic Information

- Parties to the MOU (Organization names, addresses, contact persons, phones, FAXes, e-mails)
- Purpose of the MOU
- Duration of the MOU
- Authorized Signatures, dates, titles

□ Setting the Stage

- Joint vision
- Key assessment principles
- Commitments (e.g., specific assessments, information exchange, cross referrals)
- Key practices (e.g., adherence to the Code of Fair Testing Practices in Education and WIA Section 188 Disability Checklist service plan)

□ Description of Duties and Responsibilities

- Shared or coordinated assessment responsibilities
- Individual organizational assessment responsibilities
- Methods of referral
- Exchange of information
- Management structure

□ Measuring Progress

- Performance measurement standards
- Evaluation and review processes
- Reporting and recordkeeping requirements

□ Financial Options

- Budget and methods of payment
- Non-financial cooperative agreements
- Subcontracting arrangements

□ MOU Management Issues

- Modification, amendment or assignment
- Renewal and termination
- Dispute process
- Assurances and certifications (often required/ provided by funding sources)

□ Optional Attachments

- Confidentiality/information releases
- Cross referral forms
- Resource sharing agreement
- Governance agreement

For examples of memoranda of understanding and resource agreements, visit the **New York Association of Training and Employment Professionals (NYATEP)** Web site at <http://www.nyatep.org/pubsresources/samplemous.html>

Resource mapping is especially useful in resolving funding issues, since half the battle is knowing which organizations are doing what, what fiscal resources are dedicated to assessment, and where assessment service gaps and overlaps are. Once that information is laid out, interagency agreements can be developed to specify which agencies will provide different types of assessment.

A braided funding strategy is also useful, particularly in One-Stops where several agencies may be co-located, since it allows the mixing of services without the commingling of funds. Braiding is a financial management process where collaborative members designate the use of funds from each partner for the provision of specific services. Partners maintain control of their funds rather than pooling them, which makes reporting easier and reduces turf disputes.

Program Evaluation and Reporting

Some federally funded performance-driven systems are evaluated on the basis of performance standards and goals that rely heavily on formal assessments. The No Child Left Behind Act of 2001 requires a similar evaluation system based on student achievement measures that assess whether schools are achieving “Adequate Yearly Progress.” In these systems, Workforce Investment Boards (WIBs) and state and local education agencies are penalized if they miss their goals and rewarded if they exceed their goals. Penalties and rewards are usually financial. For example, WIBs that exceed their goals earn incentive funds in addition to their annual budget; WIBs that miss their goals must implement corrective action plans without additional funding.

Resource mapping and strategic planning processes should incorporate program evaluation and reporting requirements for assessment services. The often-elaborate reporting requirements of federally funded partners will need to be factored into data sharing and data management agreements. These should also take into account confidentiality and privacy issues.

Ethical and Fair Assessment Practices

States, localities, organizations, and youth service practitioners must make every effort to provide assessment and testing services that are ethical and fair to all participants. Some youth service practitioners are

members of professional organizations that have established codes of ethics for members, including testing procedures, and these codes can be built upon to provide guidelines as needed.

The American Educational Research Association (AERA), the American Psychological Association (APA), and the National Council on Measurement in Education (NCME) have published the *Standards for Educational and Psychological Testing*. This text was revised in 1999 and provides a great detail of information concerning test construction, evaluation, and documentation; fairness in testing; and testing applications. The new *Standards* “reflect changes in federal law and measurement trends affecting validity; testing individuals with disabilities or different linguistic backgrounds; and new types of tests as well as new uses of existing tests.” (American Psychological Association, 2003).

With the involvement of many contributors to the *Standards*, and using the Fairness in Testing section as a guide, the Joint Committee on Testing Practices put together a Code of Fair Testing Practices in Education in 1988 and revised it in 2004. This code, while specifically designed to cover educational testing, addresses many ethical and practical considerations relevant to any assessment situation. The Code of Fair Testing Practices is contained in Exhibit 4.2 and provides ethical guidelines as well as effective practices in developing and selecting tests, interpreting scores, and providing information to test takers.

The fair and ethical use of testing is part of a larger sphere of fair and ethical practices in working with youth and others. Many professional organizations that work with youth or youth with disabilities have codes of ethics and standards of practice that may be used to guide the behavior of professionals working in the field of workforce development. Exhibit 4.3 is an example of such a code developed by the National Association of Workforce Development Professionals.

Confidentiality and Privacy Issues in Assessment

Data privacy practices of health, education, and human services organizations determine a portion of what must be addressed in any collaborative initiative

among agencies and institutions. Two federal data privacy laws, the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA), establish strict federal standards concerning the use of education, health, and human services information.

FERPA is a federal law that protects the privacy of student education records. The law applies to all schools, colleges, and universities that receive funds under applicable programs of the U.S. Department of Education. Exhibit 4.4 provides an overview of FERPA.

HIPAA, which took effect in April of 2003, includes a set of federal privacy standards to protect patients' medical records and other health information provided to health plans, doctors, hospitals and other health care providers. These new standards were developed by the Department of Health and Human Services to provide individuals with greater access to their medical records and more control over how their personal health information is used and disclosed. Exhibit 4.5 provides an overview of HIPAA.

In addition to FERPA and HIPAA, many states have enacted data privacy laws to protect individuals from misuse of confidential information by public and private entities. In general, private and confidential information about youth may not be shared or used in any form without the expressed and written consent of the affected individuals and those who are authorized to represent them.

Educators and other youth service providers should have a working knowledge of the data privacy laws and regulations governing the operations of their respective organizations. This includes understanding formal data management policies regulating: (a) storage, protection, and security of confidential youth information; (b) receipt and sharing of youth information; (c) the intended uses of privileged information; (d) procedures for obtaining written authorization from youth (or family members) to authorize the receipt, sharing, and use of information; (e) prevention of potential misuses of confidential information; and (f) destruction of all electronic and written records after defined time intervals. Exhibit 4.6 is a sample interagency data-sharing agreement.

A COORDINATED ASSESSMENT SERVICES SYSTEM IN ACTION

States and localities that have completed the assessment resource mapping and strategic planning process and have the appropriate interagency agreements in place should be well on their way to developing a coordinated assessment services system. Table 4.2 summarizes the general roles and responsibilities in such a system.

A Skill Gap Assessment Model

What does a coordinated assessment services system look like in action? The Eastern Washington Agriculture and Food Processing Partnership's (EWAFPP) Skill Gap Assessment Model is an example of such a system. Its 21 partners were drawn from business, labor, community and technical colleges, community-based organizations, workforce development councils, and Washington state government agencies. The goals were to (a) reduce the skill gaps for current and future workers; (b) provide a system utilizing skills standards and assessments for public and private organizations to target training investments; (c) pilot the system in a 19 county area; and (d) apply best practices to Washington State's workforce system.

In the EWAFPP model, a series of existing assessment tools were used to move future and current workers through a process that identified individuals interested in meeting or exceeding established skill standards in the food industry. A variety of assessments were used including interest inventories, employability assessments, basic skills assessments, and technical assessments in the manufacturing field. Assessment administration was shared among the partners based on their familiarity and experience—and included employers who provided performance evaluations.

As illustrated in Figure 4.3, future, transitional and incumbent workers could access the system at several entry points based on their assessed interests, basic and employability skills, basic manufacturing skills, and industry skills standards knowledge and ability. The results of the pilot project, which served 97 individuals, were that (a) employers targeted training needs to current workers; (b) workforce professionals targeted training needs to clients and students; (c)

individuals increased self-esteem; (d) career paths were clearly defined for both employed and unemployed clients by use of skill standards; and (e) students and clients were more employable (Lund, 2003).

One of the features of the EWAFPP model is the development of individual training plans for trainees based on their assets and assessed skills gaps. For individual youth in transition, organizations may want to consider assembling a team of cross-agency youth service practitioners and other involved persons to help put together formal training or career plans. Youth with or without disabilities can benefit from

career planning, especially those youth who may have limited post-secondary educational opportunities. Career planning typically involves the support of people who know and are active in the life of a youth. Secondary schools and WIA-sponsored programs are usually the locale for such planning, but other settings in the community can also be used. Person-centered career planning based on self-determination and informed choice may include some or all of the following activities:

1. Identifying career or employment goals of high importance to the individual

TABLE 4.2: ROLES AND RESPONSIBILITIES BY ORGANIZATIONAL LEVEL

State

- Resource mapping and strategic planning across state agencies and stakeholders.
- Development or amendment of Memoranda of Understanding (MOUs) between state agencies including cost sharing for assessment centers throughout the state.
- Coordination of assessment requirements for state and federal program evaluation and reporting including selection of specific test instruments.
- Development of assessment policy guidelines for use by regions and localities.
- Information dissemination guidance to regions and localities.
- Training to state and local personnel managers on global issues such as confidentiality, data-sharing, etc.

Region/Locality

- Resource mapping and strategic planning across regional/local agencies and stakeholders.
- Development of MOUs between local agencies not covered by state MOUs including locally determined assessment services and coordination.
- Implementation of state assessment policy guidelines.

- Coordination of assessment services between partners, including identification of qualified personnel, specific test instruments, and administering organizations.
- Information dissemination and guidance to organizations.
- Training to local and organizational personnel on issues such as principles guiding appropriate assessment, test administration, test accommodations, etc.

Organization

- Internal resource mapping and strategic planning.
- Development of agreements with agencies/organizations not covered by state or regional/local MOUs including the provision of assessment services not provided by state assessment centers or regional/local providers.
- Development of assessment schedules and administration policy internally and with partners.
- Selection of unique assessment instruments and development of policy guidance for assessments not covered by state or local policy.
- Guidance and training of youth service practitioners as needed.
- Provision of person-centered planning and direct assessment services to customers.

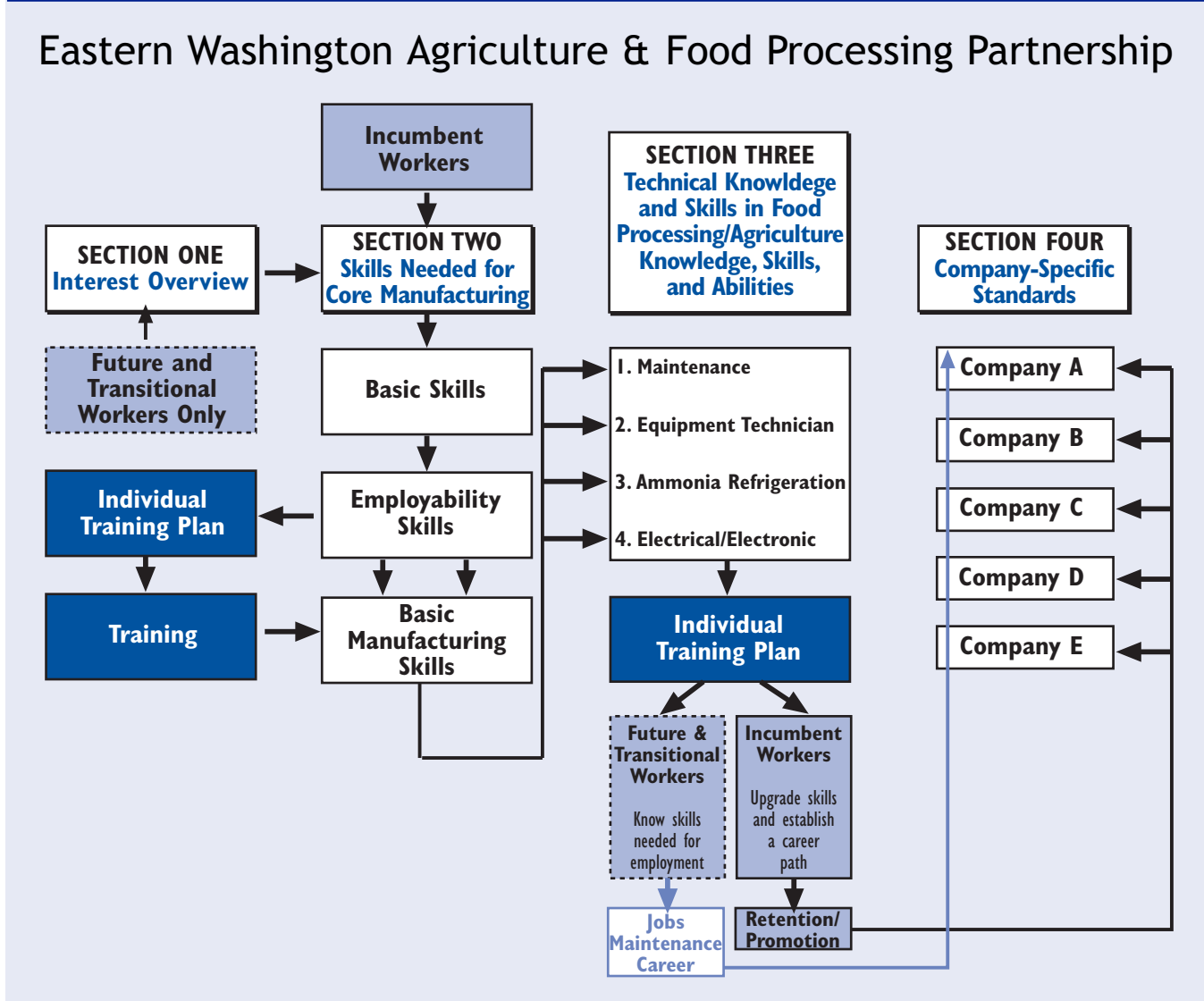
2. Planning and engaging customized support plans that are essential to finding or developing a competitive employment position of the youth's choosing
3. Identifying any secondary or postsecondary job training or education that may be needed
4. Brainstorming possible accommodations that may be necessary to perform essential job functions or to succeed in a postsecondary education program
5. Identifying the individual supports that will be necessary to pursue and obtain defined career outcomes of importance
6. Engaging individual or agency supports needed to make a career plan viable

7. Identifying ongoing job support, education, and future career development activities to promote future job progression and career success

Throughout the career planning process, assessment and testing activities can be useful. A coordinated system of assessment services featuring collaborative relationships with assessment and testing consultants will make this process efficient and timely.

At the service delivery level, career planning can be facilitated by the youth, a parent or guardian, or by an involved professional. The facilitator should understand principles of person-centered planning, informed choice and self-determination, and be aware

FIGURE 4.3: SKILL GAP ASSESSMENT MODEL



of resources and funding that may be needed to execute the plan. When a career planning process is completed, it is always wise to record all established goals and service agreements in writing. A career plan is often recorded in first-person language to clearly communicate the message that all career choices, defined outcome objectives, and service plans are the personal property of the youth.

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EXHIBIT 4.1: ASSESSMENT RESOURCE MAPPING

Exhibit 4.1 is a sample format for conducting an environmental scan that builds on information gathered about assessment programs or service providers. Keep in mind that many programs provide multiple services. When compiling data, use formatting and input that will be compatible with your end product (i.e. database or spreadsheet software). Below is guidance for completing each column on the chart.

Column 1. Identify the program and its sponsor/funder.

Column 2. List the assessment services provided by this program in the four assessment domains: educational, vocational, psychological, and medical, and the four institutional uses of assessment: eligibility determination, progress measurement, program accountability, and assistive technology or accommodation determination.

Column 3. Identify the program's target youth population and the number of youth served in the most recent period available. The latter can be expressed as a percent of the eligible population.

Column 4. Indicate how funds are distributed within the state or local area and identify who actually delivers the service and how these services are delivered.

Column 5. Identify the other agencies and organizations that the program currently partners with in providing assessment services.

This information will create a large-scale portrait of assessment services that can be used to start the analysis of services. Questions to consider in the analysis include:

- Where are the major gaps in assessment service delivery?
- Who are the target populations most in need of improved access to assessment services?
- What are the barriers to aligning assessment programs and services?
- What, if any, are the quick fixes for assessment?
- What assessment issues need to be addressed first?
- Who needs to be involved in corrective action?
- How will success be measured?
- Who is available to provide assessments, especially for youth with disabilities?

Sample Environmental Scan Format

1. Program and Sponsor/ Funder	2. Assessment Services				3. Target Population & Service Level Statistics	4. Service Delivery	5. Partnering with Other Agencies
	Educ	Voc	Psych	Med			
Eligibility Determination Formal Assessments of Progress Program Accountability Assistive Technology/ Accommodations							
Eligibility Determination Formal Assessments of Progress Program Accountability Assistive Technology/ Accommodations							

Code of Fair Testing Practices in Education

Prepared by the Joint Committee on Testing Practices

The *Code of Fair Testing Practices in Education (Code)* is a guide for professionals in fulfilling their obligation to provide and use tests that are fair to all test takers regardless of age, gender, disability, race, ethnicity, national origin, religion, sexual orientation, linguistic background, or other personal characteristics. Fairness is a primary consideration in all aspects of testing. Careful standardization of tests and administration conditions helps to ensure that all test takers are given a comparable opportunity to demonstrate what they know and how they can perform in the area being tested. Fairness implies that every test taker has the opportunity to prepare for the test and is informed about the general nature and content of the test, as appropriate to the purpose of the test. Fairness also extends to the accurate reporting of individual and group test results. Fairness is not an isolated concept, but must be considered in all aspects of the testing process.

The *Code* applies broadly to testing in education (admissions, educational assessment, educational diagnosis, and student placement) regardless of the mode of presentation, so it is relevant to conventional paper-and-pencil tests, computer based tests, and performance tests. It is not designed to cover employment testing, licensure or certification testing, or other types of testing outside the field of education. The *Code* is directed primarily at professionally developed tests used in formally administered testing programs. Although the *Code* is not intended to cover tests made by teachers for use in their own classrooms, teachers are encouraged to use the guidelines to help improve their testing practices.

The *Code* addresses the roles of test developers and test users separately. Test developers are people and organizations that construct tests, as well as those that set policies for testing programs. Test users are people and agencies that select tests, administer tests, commission test development services, or make decisions on the basis of test scores. Test developer and test user roles may overlap, for example, when a state

or local education agency commissions test development services, sets policies that control the test development process, and makes decisions on the basis of the test scores.

Many of the statements in the *Code* refer to the selection and use of existing tests. When a new test is developed, when an existing test is modified, or when the administration of a test is modified, the *Code* is intended to provide guidance for this process.

The *Code* is not intended to be mandatory, exhaustive, or definitive, and may not be applicable to every situation. Instead, the *Code* is intended to be aspirational, and is not intended to take precedence over the judgment of those who have competence in the subjects addressed.

The *Code* provides guidance separately for test developers and test users in four critical areas:

- A. Developing and Selecting Appropriate Tests
- B. Administering and Scoring Tests
- C. Reporting and Interpreting Test Results
- D. Informing Test Takers

The *Code* is intended to be consistent with the relevant parts of the *Standards for Educational and Psychological Testing* (American Educational Research Association [AERA], American Psychological Association [APA], and National Council on Measurement in Education [NCME], 1999). The *Code* is not meant to add new principles over and above those in the Standards or to change their meaning. Rather, the *Code* is intended to represent the spirit of selected portions of the *Standards* in a way that is relevant and meaningful to developers and users of tests, as well as to test takers and/or their parents or guardians. States, districts, schools, organizations and individual professionals are encouraged to commit themselves to fairness in testing and safeguarding the rights of test takers. The *Code* is intended to assist in carrying out such commitments.

The *Code* has been prepared by the Joint Committee on Testing Practices, a cooperative effort among several professional organizations. The aim of the Joint Committee is to act, in the public interest, to advance the quality of testing practices. Members of the Joint Committee include the American Counseling Association (ACA), the American Educational Research Association (AERA), the American Psychological Association (APA), the American Speech-Language-Hearing Association (ASHA), the National Association of School Psychologists (NASP), the National Association of Test Directors (NATD), and the National Council on Measurement in Education (NCME).

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A. DEVELOPING AND SELECTING APPROPRIATE TESTS

Test developers should provide the information and supporting evidence that test users need to select appropriate tests. Test users should select tests that meet the intended purpose and that are appropriate for the intended test takers.

TEST DEVELOPERS

A-1. Provide evidence of what the test measures, the recommended uses, the intended test takers, and the strengths and limitations of the test, including the level of precision of the test scores.

A-2. Describe how the content and skills to be tested were selected and how the tests were developed.

A-3. Communicate information about a test's characteristics at a level of detail appropriate to the intended test users.

A-4. Provide guidance on the levels of skills, knowledge, and training necessary for appropriate review, selection, and administration of tests.

A-5. Provide evidence that the technical quality, including reliability and validity, of the test meets its intended purposes.

A-6. Provide to qualified test users representative samples of test questions or practice tests, directions, answer sheets, manuals, and score reports.

A-7. Avoid potentially offensive content or language when developing test questions and related materials.

TEST USERS

A-1. Define the purpose for testing, the content and skills to be tested, and the intended test takers. Select and use the most appropriate test based on a thorough review of available information.

A-2. Review and select tests based on the appropriateness of test content, skills tested, and content coverage for the intended purpose of testing.

A-3. Review materials provided by test developers and select tests for which clear, accurate, and complete information is provided.

A-4. Select tests through a process that includes persons with appropriate knowledge, skills, and training.

A-5. Evaluate evidence of the technical quality of the test provided by the test developer and any independent reviewers.

A-6. Evaluate representative samples of test questions or practice tests, directions, answer sheets, manuals, and score reports before selecting a test.

A-7. Evaluate procedures and materials used by test developers, as well as the resulting test, to ensure that potentially offensive content of language is avoided.

A-8. Make appropriately modified forms of tests or administration procedures available for test takers with disabilities who need special accommodations.

A-9. Obtain and provide evidence on the performance of test takers of diverse subgroups, making significant efforts to obtain sample sizes that are adequate for subgroup analyses. Evaluate the evidence to ensure that differences in performance are related to the skills being assessed.

A-8. Select tests with appropriately modified forms or administration procedures for test takers with disabilities who need special accommodations.

A-9. Evaluate the available evidence on the performance of test takers of diverse subgroups. Determine to the extent feasible which performance differences may have been caused by factors unrelated to the skills being assessed.

B. ADMINISTERING AND SCORING TESTS

Test developers should explain how to administer and score tests correctly and fairly.

Test users should administer and score tests correctly and fairly.

TEST DEVELOPERS

B-1. Provide clear descriptions of detailed procedures for administering tests in a standardized manner.

B-2. Provide guidelines on reasonable procedures for assessing persons with disabilities who need special accommodations or those with diverse linguistic backgrounds.

B-3. Provide information to test takers or test users on test question formats and procedures for answering test questions, including information on the use of any needed materials and equipment.

B-4. Establish and implement procedures to ensure the security of testing materials during all phases of test development, administration, scoring, and reporting.

B-5. Provide procedures, materials and guidelines for scoring the tests, and for monitoring the accuracy of the scoring process. If scoring the test is the responsibility of the test developer, provide adequate training for scorers.

B-6. Correct errors that affect the interpretation of the scores and communicate the corrected results promptly.

B-7. Develop and implement procedures for ensuring the confidentiality of scores.

TEST USERS

B-1. Follow established procedures for administering tests in a standardized manner.

B-2. Provide and document appropriate procedures for test takers with disabilities who need special accommodations or those with diverse linguistic backgrounds. Some accommodations may be required by law or regulation.

B-3. Provide test takers with an opportunity to become familiar with test question formats and any materials or equipment that may be used during testing.

B-4. Protect the security of test materials, including respecting copyrights and eliminating opportunities for test takers to obtain scores by fraudulent means.

B-5. If test scoring is the responsibility of the test user, provide adequate training to scorers and ensure and monitor the accuracy of the scoring process.

B-6. Correct errors that affect the interpretation of the scores and communicate the corrected results promptly.

B-7. Develop and implement procedures for ensuring the confidentiality of scores.

C. REPORTING AND INTERPRETING TEST RESULTS

Test developers should report test results accurately and provide information to help test users interpret test results correctly.

Test users should report and interpret test results accurately and clearly.

TEST DEVELOPERS

C-1. Provide information to support recommended interpretations of the results, including the nature of the content, norms or comparison groups, and other technical evidence. Advise test users of the benefits and limitations of test results and their interpretation. Warn against assigning greater precision than is warranted.

C-2. Provide guidance regarding the interpretations of results for tests administered with modifications. Inform test users of potential problems in interpreting test results when tests or test administration procedures are modified.

C-3. Specify appropriate uses of test results and warn test users of potential misuses.

C-4. When test developers set standards, provide the rationale, procedures, and evidence for setting performance standards or passing scores. Avoid using stigmatizing labels.

C-5. Encourage test users to base decisions about test takers on multiple sources of appropriate information, not on a single test score.

C-6. Provide information to enable test users to accurately interpret and report test results for groups of test takers, including information about who were and who were not included in the different groups being compared, and information about factors that might influence the interpretation of results.

C-7. Provide test results in a timely fashion and in a manner that is understood by the test taker.

C-8. Provide guidance to test users about how to monitor the extent to which the test is fulfilling its intended purposes.

TEST USERS

C-1. Interpret the meaning of the test results, taking into account the nature of the content, norms or comparison groups, other technical evidence, and benefits and limitations of test results.

C-2. Interpret test results from modified test or test administration procedures in view of the impact those modifications may have had on test results.

C-3. Avoid using tests for purposes other than those recommended by the test developer unless there is evidence to support the intended use or interpretation.

C-4. Review the procedures for setting performance standards or passing scores. Avoid using stigmatizing labels.

C-5. Avoid using a single test score as the sole determinant of decisions about test takers. Interpret test scores in conjunction with other information about individuals.

C-6. State the intended interpretation and use of test results for groups of test takers. Avoid grouping test results for purposes not specifically recommended by the test developer unless evidence is obtained to support the intended use. Report procedures that were followed in determining who were and who were not included in the groups being compared and describe factors that might influence the interpretation of results.

C-7. Communicate test results in a timely fashion and in a manner that is understood by the test taker.

C-8. Develop and implement procedures for monitoring test use, including consistency with the intended purposes of the test.

D. INFORMING TEST TAKERS

Under some circumstances, test developers have direct communication with the test takers and/or control of the tests, testing process, and test results. In other circumstances the test users have these responsibilities. Test developers or test users should inform test takers about the nature of the test, test taker rights and responsibilities, the appropriate use of scores, and procedures for resolving challenges to scores.

D-1. Inform test takers in advance of the test administration about the coverage of the test, the types of question formats, the directions, and appropriate test-taking strategies. Make such information available to all test takers.

D-2. When a test is optional, provide test takers or their parents/guardians with information to help them judge whether a test should be taken—including indications of any consequences that may result from not taking the test (e.g., not being eligible to compete for a particular scholarship) —and whether there is an available alternative to the test.

D-3. Provide test takers or their parents/guardians with information about rights test takers may have to obtain copies of tests and completed answer sheets, to retake tests, to have tests rescored, or to have scores declared invalid.

D-4. Provide test takers or their parents/guardians with information about responsibilities test takers

have, such as being aware of the intended purpose and uses of the test, performing at capacity, following directions, and not disclosing test items or interfering with other test takers.

D-5. Inform test takers or their parents/guardians how long scores will be kept on file and indicate to whom, under what circumstances, and in what manner test scores and related information will or will not be released. Protect test scores from unauthorized release and access.

D-6. Describe procedures for investigating and resolving circumstances that might result in canceling or withholding scores, such as failure to adhere to specified testing procedures.

D-7. Describe procedures that test takers, parents/guardians, and other interested parties may use to obtain more information about the test, register complaints, and have problems resolved.

Note: The membership of the Working Group that developed the *Code of Fair Testing Practices in Education* and of the Joint Committee on Testing Practices that guided the Working Group is as follows:

Peter Behuniak, PhD

Lloyd Bond, PhD

Gwyneth M. Boodoo, PhD

Wayne Camara, PhD

Ray Fenton, PhD

John J. Fremer, PhD (Co-Chair)

Sharon M. Goldsmith, PhD

Bert F. Green, PhD

William G. Harris, PhD

Janet E. Helms, PhD

Stephanie H. McConaughy, PhD

Julie P. Noble, PhD

Wayne M. Patience, PhD

Carole L. Perlman, PhD

Douglas K. Smith, PhD (deceased)

Janet E. Wall, EdD (Co-Chair)

Pat Nellor Wickwire, PhD

Mary Yakimowski, PhD

Lara Frumkin, PhD, of the APA
served as staff liaison.

The Joint Committee intends that the Code be consistent with and supportive of existing codes of conduct and standards of other professional groups who use tests in educational contexts. Of particular note are the Responsibilities of Users of Standardized Tests (Association for Assessment in Counseling, 1989), APA Test User Qualifications (2000), ASHA Code of Ethics (2001), Ethical Principles of Psychologists and Code of Conduct (1992), NASP Professional Conduct Manual (2000), NCME Code of Professional Responsibility (1995), and Rights and Responsibilities of Test Takers: Guidelines and Expectations (Joint Committee on Testing Practices, 2000).

Code of Professional Ethics and Practices

National Association of Workforce
Development Professionals

Revised March 3, 2002

Approved by the NAWDP Board of Directors,
March 3, 2002

General Principles

As a member of the National Association of Workforce Development Professionals, I pledge to

- exhibit and uphold the highest standards of professional and ethical conduct in order to ensure the integrity and advancement of the workforce development profession;
- advance programs and services that are consistent with the public trust and responsive to the public interest;
- demonstrate commitment to maintaining professional competencies through ongoing professional development.
- exercise maximum effort in the workplace to ensure optimal benefit to my customers—employers, job seekers and trainees—and to my organization and community;
- promote cooperation and collaboration with partner organizations in order to maximize our customers' opportunities for success;
- respect the integrity, promote the welfare and maximize the freedom of choice and informed consent of my customers;
- respect and protect the privacy of my customers when gathering, recording, storing and sharing confidential information;
- recognize and respect the unique challenges faced by culturally or ethnically diverse and physically or mentally challenged individuals; and
- abstain from using my official position to secure personal or political privilege, advantage, gain or benefit.

This Code of Professional Ethics and Practices for members of the National Association of Workforce Development Professionals has been adopted to establish and advance the highest standards of professional and ethical conduct among its members. By joining the Association, a member espouses this Code thereby assuring public confidence in the principles and integrity of workforce development professionals.

Standards of Practice

The standards of practice articulate specific areas of application for professional and ethical behavior and decision-making for members of the profession. These standards of practice are intended to provide detailed guidance to members regarding their responsibilities to customers, their employer, colleagues, partner organizations, and the profession in general.

Responsibilities to Customers

- 1.0 Customer Commitment** – Members respect the dignity and well-being of the customer by providing information and services designed to advance the economic interests and welfare of the customer.
- 1.1 Customer Self-determination** – Members respect and promote customer freedom of choice and informed consent.
- 1.2 Confidentiality** – Members respect and safeguard the customer’s right to privacy by promoting confidentiality in gathering, recording, storing, and sharing personal and sensitive customer information.
- 1.3 Conflicts of Interest** – Members avoid situations where real or potential conflicts of interest may arise. If members find themselves in a conflict of interest situation, they report the situation to their employer at the earliest possible time.
- 1.3a Dual Relationships** – Members, who in their official capacity are in a position of power, decision-making and/or influence over a customer, do not engage in extra-organizational interpersonal relationships with customers so as to avoid any real or potential harm or exploitation of the customer. If such a relationship is unavoidable for legitimate reasons, the member is required to disclose the situation to management so appropriate oversight may be provided.
- 1.3b Unfair Influence** – Members do not use their official capacity to unfairly influence customers to further their personal, political, religious, business, or financial interests.
- 1.3c Acceptance of Gifts** – Members do not solicit or accept gifts or services from customers that provide personal gain, benefit, or advantage. When in doubt regarding a situation, members are to consult with their employer.
- 1.4 Professional Relationships** – Members develop and maintain professional and ethical working relationships with customers.
- 1.4a Member to Customer Interactions** – In all interactions with customers, members act respectfully and professionally. Members refrain from using disrespectful and/or derogatory language.
- Members take reasonable steps to ensure customers fully understand complex information and are properly prepared to make important decisions.
- 1.4b Professional Competence** – Members do not engage in activities with customers for which they are not competent by means of academic preparation, in-service training, prior experience, and/or supervised on-site training.
- 1.4c Physical Contact** – Members avoid inappropriate physical contact and/or comments that might be perceived as unwelcome or harassing.
- 1.5 Standardized Assessment Instruments** – Members promote the professional and ethical use of standardized assessment instruments. Members understand that standardized instruments are a valuable part of an assessment process but may require substantial expertise to use properly. Members attempt to prevent and/or correct situations in which standardized instruments are used improperly.
- 1.5a Appropriate Use of Standardized Instruments** – Members ensure that standardized instruments will be used only for the purposes identified by the publisher/developer.
- 1.5b Instrument Selection** – Members use standardized instruments only with individuals identified as appropriate by the test developer/publisher. When instruments are used with individuals not identified as appropriate (i.e., not part of a normed group), the member recognizes the results of the testing process may not be valid and uses such results with significant caution.
- 1.5c Staff Preparation** – Members involved in standardized instrument selection, administration, scoring and interpretation must be competent to perform their role in the assessment process by virtue of academic preparation, in-service training, prior experience, or supervised on-site training.
- 1.5d Customer Orientation** – Members orient customers properly to the purpose and process of any standardized assessment activity in order to ensure the results of the process provide a fair and accurate representation of the customer.

1.5e *Administration and Scoring* – Members follow administration and scoring standards required by the developer/publisher and ensure that the environment during the assessment process provides the most favorable conditions possible for the customer.

1.5f *Interpretation of Results* – Members ensure that customers receive a full and complete interpretation of the instruments' results in a format they can both understand and integrate with other applicable assessment information.

1.5g *Limitations of Standardized Instruments* – Members recognize the proper role of standardized instruments and take into account such limitations of customers age, physical or learning disability, culture, education, literacy and other related factors.

1.6 **Use of Technology** – Members whose organizations leverage technology in their services matrix must ensure the technology is used to benefit the customer and that adequate safeguards protect the customer's right to confidentiality.

1.6a *Self-directed Services* – Members ensure that customers accessing information via technology receive proper guidance and oversight in order to maximize their benefit. Members also ensure that the organization's technology is utilized by customers only for authorized activities.

1.6b *Confidentiality* – Where customers are provided with storage of personal files on internal networks, members ensure adequate safeguards are constructed to protect the customer's confidential information and prevent unauthorized access.

Responsibilities to Employer

2.0 **Commitment to Employer** – Members recognize and accept their ethical responsibilities to their employer by performing their job duties with integrity, competence and professionalism. When representing their employer in the public arena, members demonstrate appropriate ethical and professional behavior.

2.1 **Professional Accountability** – Members demonstrate maximum effort in the workplace

and promote and support the vision, goals, and objectives of the organization. Members adhere to the policies and procedures established by the organization. If members experience conflicts or situations where either the welfare of the customer or the organization is threatened, the member discloses the conflict or situation to the organization at the earliest possible time.

2.2 **Professional Development** – Members demonstrate a positive commitment to professional development in order to increase or enhance their knowledge, skills, and/or competencies. Members participate in performance appraisal processes in a positive manner.

2.3 **Use of Technology** – Members utilize their organization's technology only for authorized activities. Members do not use the Internet, e-mail, and/or other electronic systems for personal use unless expressly approved by management. Members do not copy, borrow, or in any other way violate the copyright restrictions of software registered to the organization.

2.4 **Management Responsibilities** – Members in supervisory and/or management positions recognize and accept their ethical responsibilities to deal fairly and professionally with coworkers and subordinates.

2.4a *Performance Feedback* – Members in management positions provide fair, accurate and timely feedback to subordinates in order to facilitate increased performance at the individual, unit, and/or department level.

2.4b *Staff Preparation and Training* – Members in management positions do not require or encourage staff to take on work assignments for which they are not prepared or competent unless training and/or direct supervision is provided. Members in management positions provide ongoing training to subordinates to ensure competence to deal with expanding roles and responsibilities.

2.4c *Productive Work Environment* – Members in management positions create and maintain productive work environments where colleagues and subordinates are encouraged to perform at optimal levels under positive, non-threatening condi-

tions. Members in management positions encourage colleagues and subordinates to play an active role in continuous improvement processes designed to increase the performance of the organization.

Responsibilities to Colleagues

3.0 Commitment to Colleagues – Members recognize and accept their ethical responsibilities to colleagues by demonstrating interpersonal respect and cooperation. Members refrain from unwarranted criticism of colleagues, demeaning comments and do not engage colleagues in personal conflicts or disputes. If a member becomes involved in a personal conflict or dispute with a colleague, the member must make a good faith effort to resolve the situation. If unable to resolve the situation, the member should consult with management.

3.1 Impairment, Incompetence, or Unethical Behavior of Colleagues – Members who observe impairment, incompetence, or unethical behavior on the part of a colleague should make a good faith effort to consult with the colleague to make him aware of his behavior and what might be done to prevent and/or correct the situation. If the impairment, incompetence, or unethical behavior continues and is of a serious nature, the member must report the impairment, incompetence or unethical behavior to management.

3.2 Illegal or Threatening Behavior of Colleagues – Members who observe or who have a serious suspicion of illegal or threatening behavior of a colleague should contact management at the earliest possible time.

Responsibilities to Partner Organizations

4.0 Commitment to Partner Organizations – Members recognize and accept their professional and ethical responsibilities to partner organizations by demonstrating interpersonal respect, cooperation, collaboration, and teamwork. Members refrain from unwarranted criticism of partner organizations and demeaning comments and do not engage in personal conflicts or disputes with colleagues in partner organizations. If a member becomes involved in a personal conflict or dispute with a colleague of a

partner organization, the member must make a good faith effort to resolve the situation. If unable to resolve the situation, the member should consult with his or her employer.

4.1 Impairment, Incompetence or Unethical Behavior of Partner Organization Colleagues – Members who observe impairment, incompetence, or unethical behavior on the part of a partner organization colleague should make a good faith effort to consult with the colleague to make him aware of his behavior and what might be done to prevent and/or correct the situation. If the impairment, incompetence, or unethical behavior continues and is of a serious nature, the member must report the impairment, incompetence, or unethical behavior to his or her employer.

4.2 Illegal or Threatening Behavior of Colleagues – Members who observe or who have a serious suspicion of illegal or threatening behavior of a partner organization colleague should contact management at the earliest possible time.

Responsibilities to the Profession

5.0 Commitment to the Profession – Members demonstrate the highest standards of professional and ethical conduct in order to promote the integrity of the workforce development profession and to enhance the identity of the profession in the eyes of the public and other stakeholders.

5.1 Advancement of the Profession – Members participate in local, state, regional, and national forums and activities intended to further the vision, goals, and objectives of the profession.

5.2 Program Evaluation and Research – Members contribute to the knowledge base of the workforce development profession by participating in and supporting research and other activities that identify successful strategies and programs.

NOTE #1: Sections of this document were developed by using the following codes as models: *Code of Ethics* of the National Association of Social Workers and the *Code of Ethics and Standards of Practice* of the American Counseling Association.

NOTE #2: Members of NAWDP are encouraged to provide whatever feedback or input they feel is necessary. Members are also encouraged to disseminate and discuss these ethical guidelines with colleagues.

Family Educational Rights and Privacy Act (FERPA)

The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99) is a Federal law that protects the privacy of student education records. The law applies to all schools that receive funds under an applicable program of the U.S. Department of Education.

FERPA gives parents certain rights with respect to their children’s education records. These rights transfer to the student when he or she reaches the age of 18 or attends a school beyond the high school level. Students to whom the rights have transferred are “eligible students.”

- Parents or eligible students have the right to inspect and review the student’s education records maintained by the school. Schools are not required to provide copies of records unless, for reasons such as great distance, it is impossible for parents or eligible students to review the records. Schools may charge a fee for copies.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading. If the school decides not to amend the record, the parent or eligible student then has the right to a formal hearing. After the hearing, if the school still decides not to amend the record, the parent or eligible student has the right to place a statement with the record setting forth his or her view about the contested information.
- Generally, schools must have written permission from the parent or eligible student in order to release any information from a student’s education record. However, FERPA allows schools to disclose those records, without consent, to the following parties or under the following conditions (34 CFR § 99.31):
 - School officials with legitimate educational interest;
 - Other schools to which a student is transferring;
 - Specified officials for audit or evaluation purposes;
 - Appropriate parties in connection with financial aid to a student;
 - Organizations conducting certain studies for or on behalf of the school;
 - Accrediting organizations;
 - To comply with a judicial order or lawfully issued subpoena;
 - Appropriate officials in cases of health and safety emergencies; and
 - State and local authorities, within a juvenile justice system, pursuant to specific State law.

Schools may disclose, without consent, “directory” information such as a student’s name, address, telephone number, date and place of birth, honors and awards, and dates of attendance.

However, schools must tell parents and eligible students about directory information and allow parents and eligible students a reasonable amount of time to request that the school not disclose directory information about them. Schools must notify parents and eligible students annually of their rights under FERPA. The actual means of notification (special letter, inclusion in a PTA bulletin, student handbook, or newspaper article) is left to the discretion of each school.

For additional information or technical assistance, you may call (202) 260-3887 (voice). Individuals who use TDD may call the Federal Information Relay Service at 1-800-877-8339.

Or you may contact us at the following address:
 Family Policy Compliance Office
 U.S. Department of Education
 400 Maryland Avenue, SW
 Washington, D.C. 20202-4605

U.S. Department of Education
 Policy Guidance
<http://www.ed.gov/policy/gen/guid/fpc/ferpa/index.html>

The HIPAA Privacy Rule

The *Standards for Privacy of Individually Identifiable Health Information* (Privacy Rule) establishes, for the first time, a set of national standards for the protection of certain health information. The U.S. Department of Health and Human Services (HHS) issued the Privacy Rule to implement the requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Privacy Rule standards address the use and disclosure of individuals' health information – called “protected health information” by organizations subject to the Privacy Rule – called “covered entities,” as well as standards for individuals' privacy rights to understand and control how their health information is used. Within HHS, the Office for Civil Rights (“OCR”) has responsibility for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil money penalties.

A major goal of the Privacy Rule is to assure that individuals' health information is properly protected while allowing the flow of health information needed to provide and promote high quality health care and to protect the public's health and well being. The Rule strikes a balance that permits important uses of information, while protecting the privacy of people who seek care and healing. Given that the health care marketplace is diverse, the Rule is designed to be flexible and comprehensive to cover the variety of uses and disclosures that need to be addressed.

Protected Health Information. The Privacy Rule protects all “*individually identifiable health information*” held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information “*protected health information (PHI)*.”

“*Individually identifiable health information*” is information, including demographic data, that relates to

- the individual's past, present or future physical or mental health or condition,
- the provision of health care to the individual, or
- the past, present, or future payment for the provision of health care to the individual,

and that identifies the individual or for which there is a reasonable basis to believe can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

De-Identified Health Information. There are no restrictions on the use or disclosure of de-identified health information. De-identified health information neither identifies nor provides a reasonable basis to identify an individual. There are two ways to de-identify information; either: 1) a formal determination by a qualified statistician; or 2) the removal of specified identifiers of the individual and of the individual's relatives, household members, and employers is required, and is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.

Covered Entities. The Privacy Rule, as well as all the Administrative Simplification rules, apply to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA (the “covered entities”). For help in determining whether you are covered, use the decision tool at: <http://www.cms.hhs.gov/hipaa/hipaa2/support/tools/decisionsupport/default.asp>.

To view the entire Rule, and for other additional helpful information about how it applies, see the OCR Web site: <http://www.hhs.gov/ocr/hipaa>. In the event of a conflict between this summary and the Rule, the Rule governs.

Excerpted from “OCR Privacy Brief: Summary of the HIPAA Privacy Rule”
Office for Civil Rights
U.S. Department of Health and Human Services
<http://www.hhs.gov/ocr/privacysummary.rtf>

Sample Inter-Agency Data-Sharing Agreement Department of Health/State Medicaid Agency

State of _____

Requester

Agency Name _____

Data User _____

Title _____

Address _____

Phone _____

Data Provider

Agency Name _____

Custodian _____

Title _____

Address _____

Phone _____

I. PURPOSE

In this section, both parties must state in non-technical language the purpose(s) for which they are entering into the agreement, i.e., how the data will be used, what studies will be performed, or what the desired outcomes are perceived to be as a result of obtaining the data. The source of the data will come from any and all public health or claims databases. The data will only be used for research and/or analytical purposes and will not be used to determine eligibility or to make any other determinations affecting an individual. Furthermore, as the data will be shared within a State, it will be subjected to all applicable requirements regarding privacy and confidentiality that are described herein.

II. PERIOD OF AGREEMENT

The period of agreement shall extend from _____ to _____.

III. JUSTIFICATION FOR ACCESS

A. Federal requirements: Section 1902(a)(7) of the Social Security Act (as amended) provides for safeguards which restrict the use or disclosure of information concerning Medicaid applicants and recipients to purposes directly connected with the administration of the State plan. Regulations at 42 CFR 431.302 specify the purposes directly related to State plan administration. These include (a) establishing eligibility; (b) determining the amount of medical assistance; providing services for recipients; and (d) conducting or assisting an investigation, prosecution, or civil or criminal proceeding related to the administration of the plan.

If the State Medicaid agency is a party to this agreement, specifically as the provider of information being sought by the requestor, it must be demonstrated in this section how the disclosure of information meets the above requirements.

An example of permissible data matching/sharing arrangements is the matching of data with a registry of vaccines or diseases for the purposes of improving outreach or expanding Medicaid coverage of populations being served under Medicaid.

States should identify any additional requirements that are needed for the release of additional data in this section.

B. State requirements: Cite specific State statutes, regulations, or guidelines (See Appendices)

IV. DESCRIPTION OF DATA

In this section, the parties provide specific detailed information concerning the data to be shared or exchanged.

V. METHOD OF DATA ACCESS OR TRANSFER

A description of the method of data access or transfer will be provided in this section. The requestor and its agents will establish specific safeguards to assure the confidentiality and security of individually identifiable records or record information. If encrypted identifiable information is transferred electronically through means such as the Internet, then said transmissions will be consistent with the rules and standards promulgated by Federal statutory requirements regarding the electronic transmission of identifiable information.

VI. LOCATION OF MATCHED DATA AND CUSTODIAL RESPONSIBILITY

The parties mutually agree that one State agency will be designated as “Custodian” of the file(s) and will be responsible for the observance of all conditions for use and for establishment and maintenance of security agreements as specified in this agreement to prevent unauthorized use. Where and how the data will be stored and maintained will also be specified in this section.

This agreement represents and warrants further that, except as specified in an attachment or except as authorized in writing, that such data shall not be disclosed, released, revealed, showed, sold, rented, leased, loaned, or otherwise have access granted to the data covered by this agreement to any person. Access to the data covered by this agreement shall be limited to the minimum number of individuals necessary to achieve the purpose stated in this section and to those individuals on a need-to-know basis only.

Note that, if all individually identifiable Medicaid data remains within the purview of the State Medicaid agency, matching with any other data is permissible. Any results of the data matching which contains individually identifiable data cannot be released outside the agency unless the release meets the conditions of Section III.

Any summary results, however, can be shared. Summary results are those items which cannot be used to identify any individual. It should be noted that the stripping of an individual’s name or individual identification number does not preclude the identification of that individual, and therefore is not sufficient to protect the confidentiality of individual data.

VII. CONFIDENTIALITY

The User agrees to establish appropriate administrative, technical, and physical safeguards to protect the confidentiality of the data and to prevent unauthorized use or access to it. The safeguards shall provide a level and scope of security that is not less than the level and scope of security established by the Office of Management and Budget (OMB) in OMB Circular No. A-130, Appendix III – Security of Federal Automated Information System, which sets forth guidelines for security plans for automated information systems in Federal agencies.

Federal Privacy Act requirements will usually not apply if this agreement is entered into by agencies of the State and no Federal agencies are involved. The same applies to the Computer Matching and Privacy Protection Act of 1988. However, State laws, regulations, and guidelines governing privacy and confidentiality will apply.

It is strongly suggested that the guidelines presented in the Model State Vital Statistics Act be applied. The

guidelines are available from the U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control and Prevention, National Center for Health Statistics, Hyattsville, Maryland (DHHS) Publication No. (PHS) 95-1115.

Where States have enacted laws based on this model, the actual provisions of the statute take precedence.

VIII. DISPOSITION OF DATA

(Sample Language)

The requestor and its agents will destroy all confidential information associated with actual records as soon as the purposes of the project have been accomplished and notify the providing agency to this effect in writing. Once the project is complete, the requester will

1. destroy all hard copies containing confidential data (e.g., shredding or burning);
2. archive and store electronic data containing confidential information off line in a secure place, and delete all on line confidential data; and
3. all other data will be erased or maintained in a secured area.

IX. DATA-SHARING PROJECT COSTS

In this section, it should be stated in detail how the costs associated with the sharing or matching of data are to be met. If these can be absorbed by the “salaries and expenses,” and the partner providing the requested data is agreeable to absorbing such costs, that should be noted here. If there are extra costs to be assumed, the parties need to specify here how they will be met. If the requesting party is to bear the burden of specific extra costs, or the party providing the data is unable or unwilling to bear such, these special requirements are to be formalized in this section.

X. RESOURCES

The types and number of personnel involved in the data sharing project, the level of effort required, as well as any other non-personnel resources and material, which are required, are to be listed here.

XI. SIGNATURES

In witness whereof, the Agencies’ authorized representatives as designated by the Medicaid Director and Health Commissioner attest to and execute this agreement effective with this signing for the period set forth in Article II.

(Name)

(Title)

(Date)

(Name)

(Title)

(Date)

Source: Centers for Medicaid and Medicare Services
<http://www.cms.hhs.gov/states/letters/smd10228.asp>

