

INFORMATION SHARING PROTOCOL

MODEL FOR THE COORDINATION OF SERVICES TO CHILDREN AND YOUTH

PREAMBLE

The Departments of Education, Health, Human Resources and Employment and Justice agree to the terms of the **Information Sharing Protocol** which is intended to establish a mechanism for information sharing among service providers and children/families during support services planning process.

1.1 General

(i) The **Protocol** will apply to:

- All employees, and agents and their employees, of the Departments of Education, Health, Human Resources and Employment, and Justice; and
- Individuals supplying services under contract to the Departments of Education, Health, Human Resources and Employment and Justice

who are engaged in the development, implementation of monitoring of an Individual Support Services Plan for a child or youth with special needs as defined in the **Model for Coordination of Services to Children and Youth?**

(ii) This **Protocol** does not supersede any policies, procedures, memorandums of understanding, or agreements which have been developed by Departments for information sharing in other contexts. It will apply only to information sharing for purposes of the implementation of the **Model for Coordination of Services to Children and Youth**.

1.2 Definitions

In this **Protocol** the following definitions are adopted:

(a)**Child**: “child” means a minor under the age of 19 years in accordance with the provisions of the *Age of Majority Act*, S. N 1995, c. A-4.2;

(b)**Client**: “client” means a child with special needs who is the subject of the Support Services planning process;

(c)Consent: “consent” means the informed agreement to the sharing of specified information among the members of the Individual Support Services Team and any other individual engaged in the delivery of services to the child pursuant to an Individual Support Services Plan. Consent will be writing and in the prescribed form.

(d)Department: “department” means the department of Education, the Department of Health, the Department of Human Resources and Employment, and the Department of Justice and includes any departmental employee or contractor who is or may be involved in the development and/or implementation of an individual support services plan;

(e)Individual Support Services Plan “Individual Support Services Plan” means a plan which contains relevant information regarding the strengths and needs of the child, related service areas, goals and the program which will be followed;

(f)Individual Support Services Manager: “Individual Support Services Manager” means the individual who has been designated as the manager of the individual support services plan team;

(g)Individual Support Services Team “Individual Support Services Team” means the group of individuals responsible for the development, implementation and monitoring of the Individual Support services Plan;

(h)Information: “information” means information in any form including information that is written, photographed, recorded or stored by other means and on file or in the possession or under the control of a department;

(i)Parent: “parent” means the biological or adoptive parent of the child or his/her legal guardian but does not include a foster parent. In the case of divorced or separated couples, parent means that individual with legal custody or if legal custody has not been determined, the parent who has physical custody of the child for more than 50 per cent of the time over the course of a year. In the case of a child who is a permanent ward parent means the Director of Child Welfare;

(j)Profile: “profile” means the instrument which will be completed by the Manager of the individual Support Services team describing the specific needs of each child;

(k)Record: “record” means any data, information or documentation that is described as a record by legislation or by the internal administrative policies, procedures or guidelines of a Department or agency.

1.3 Consent

- (i) Information in the possession of a Department which relates to a child/youth who is the subject of the individual support services planning process or his/her family will only be shared with the written and informed consent of the designated party, unless otherwise provided in this **Protocol**
- (ii) Consent must be voluntary and genuine and given freely by a designated individual who is capable of appreciating the nature and consequences of consent. Consent must not be obtained through pressure, coercion or any other illegitimate means. The individual whose consent is required must not be under the influence of drugs, alcohol or any other substance which would impair his/her understanding to a degree which would prevent an appreciation of the nature and consequences of the consent.
- (iii) Consent must be informed. The party whose consent is necessary must be advised of the following matters before giving consent
 - The length of time the consent is in force
 - The information which will be the subject of sharing the sue to which the information will be put
 - Measures which will be employed to ensure the confidentiality of the information, including the storage and destruction of records
 - Parties who may have access to the information
 - The conditions under which the information will be shared
 - The ability of the individual to withhold consent
 - The circumstances under which information will be shared without consent
 - Procedures for the revocation of consent
- (iv) Consent may be dispensed with only according to the terms of this **Protocol**

1.4 Who May Give Consent?

- (i) Unless otherwise provided in this **Protocol**, information will only be shared:
 - (a) With the written and informed consent of the parent/guardian of a minor; or
 - (b) With the written consent of an individual over the age of 19 who I the subject of the support services planning process; or
 - (c) With the written consent of a child over the age of sixteen but under the age of majority, who has withdrawn from parental care?
- (ii) If a parent or individual over the age of 19, whose consent is required by this **Protocol**, has been deemed legally incompetent by court order, the consent of a guardian, trustee or next of kin may be substituted.

(iii) If, in the assessment of the service provider, the individual whose consent is required is incapable of appreciating the nature and consequences of consent by reason of developmental delay, medical condition or other physical cause (including the influence of alcohol/drugs) consent may be substituted by another party, as defined in the following sections, or waived.

(iv) An individual will be incapable of appreciating the nature and consequences of consent if the developmental delay, medical condition or other physical cause prevents that individual from understanding the following matters:

- The purpose for which the consent is sought
- The information which will be the subject of sharing
- The use to which the information will be put
- The conditions under which the information will be shared

(v) If the party whose consent is required is incapable of understanding the nature and consequences of the consent, the following rules will apply:

a. Where consent must be given by youth over the age of 19:

- If a youth over the age of 19 is wholly incapable of providing consent, the consent of a parent, guardian, next of kin or other person exercising care and supervision in relation to the individual may be substituted.
- If youth over the age of 19 demonstrates a limited understanding of consent, then the consent of both the parent (or any other party designated in this section: and the youth is required.
- If no parent, guardian, next of kin or other responsible individual is available to provide consent, and then consent may be waived, if, in the assessment of the service provider, it is in the best interests of the individual to share information.

b. Where consent must be given by a parent:

- If a parent whose consent is required is wholly incapable of providing consent, the consent of the other parent, spouse, next of kin or any other individual exercising care or supervision in relation to the parent may be substituted. In such circumstances, the consent of the child should also be obtained if, in the assessment of the service provider, the child is of sufficient maturity to understand the nature and consequences of the consent.
- If there is no parent, spouse, next of kin or other responsible individual to provide consent, the consent of a child of sufficient understanding

will be sufficient. If the child lacks sufficient capacity to appreciate the nature and consequences of consent, consent may be waived, if, in the assessment of the service provider, information sharing is in the best interests of the child.

- (vi) Where consent will be substituted or waived, the service provider must provide reasons to the party whose consent is required or any individual acting on his/her behalf. The affected individual will be given an opportunity to demonstrate his/her understanding of the process. The service provider shall also supply his or her supervisor or immediate superior with a written statement which describes the reasons for seeking substituted consent or a waiver of consent and which identifies any other individuals whose consent may be obtained. This statement shall be reviewed by the immediate supervisor or superior. Substituted consent may not be given nor shall consent be waived without the prior, written approval of the supervisor/superior.

1.5 When and How Consent will be Obtained

- (i) The consent or waiver of consent shall be in writing in the prescribed Form. (Form attached as Appendix "A").
- (ii) The consent (whether original or substituted) or waiver of consent shall be obtained by the service provider responsible for making the initial referral to the Individual Support Services Planning Team
- (iii) The original signed consent form or waiver of consent form shall be kept on file with the originating service provider/agency and copies shall be circulated to all affected Departments/service providers in advance of the first meeting of the Individual Support Services Planning Team
- (iv) The consent may be revoked in writing at any time by the party who has given consent. The original revocation shall be kept on file with the recipient agency and copies of the revocation shall be circulated to all service providers.

1.6 When Consent is Not Required

- (i) Information may be shared without consent **only** when such disclosure is authorized by law or by internal Departmental/agency guidelines or when, in the assessment of the service provider, the disclosure of such information is necessary to protect the life, health, or safety of the child or others. IN such cases, only that information necessary to ensure the life, health or safety of the child will be subject to release.

1.7 Information which May be Shared

- (i) Only that information which is specified in the consent form and which is relevant to the support services planning process will be shared. Relevancy is based upon the primary areas of need of the child/youth as identified in the Profile. Relevant information includes, but is not limited to, the following categories of need:
- Academic level
 - Attendance
 - Behavior
 - Cognitive delay
 - Developmental delay
 - Environment
 - Hearing
 - Health
 - Learning disability
 - Mental health
 - Physical mobility
 - Speech/language
 - Victimization
 - Visual
- (ii) Information which is not relevant to the identification of the child's/youth/s strengths and needs and service areas will not be shared unless consent has been given to the sharing of such information.
- (iii) The procedures governing information sharing for purposes of the implementation of the Model for Co-ordination of Services will apply to information sharing in relation to young offenders subject to any contrary provisions contained in either the **Young Offender Act** or elsewhere in this **Protocol**

1.8 Information which may not be shared

- (i) The following information shall not be subject to release/sharing:
- Information in the possession of the Crown which is not otherwise a matter of public record
 - Police information not subject to section 38 of the **Child Welfare Act**, including protected and classified material, confidential human sources, third party information (subject to the third party rule).and Information contained in administrative or financial files.

- An allegation of child abuse or any information relating to an ongoing investigation (whether by police or the Director of Child Welfare) into an allegation of child abuse
- Any other information, the secrecy of which is guaranteed by law.

The release of such information will only be undertaken in accordance with the provisions of the **Freedom of Information Act**

- (ii) At the discretion of the Individual Support Services Manager, information which may adversely affect the child or the child/parent relationship may be withheld from the child or parent.

1.9 Procedures for Information Sharing

- (i) Team members will provide a synopsis of relevant information in relation to the child's/youth's strengths, needs and recommended areas of service in all cases in which consent has been obtained or a waiver of consent has been approved. The synopsis may be either verbal or written
- (ii) Records will remain the property of the originating agency unless consent has been given to the sharing of a specific record and there are no legislative/administrative provisions preventing the sharing of records. The appropriate Departmental/agency personnel shall review the file and transmit a photocopy of the record to the Individual Support Services Manager. It will be the responsibility of the Individual Support Services Manager to ensure that all team members receive a copy of the record. In such a case, the document shall be clearly marked as a 'copy'.
- (iii) Information which has been received from another Department, agency or service provider, shall not be released as part of the record without the consent of the designated party. However, the record may indicate that a particular Department, agency or individual holds such information.
- (iv) Copies of records which have been circulated by members of the Individual Support Services Planning Team will be collected and destroyed by the Individual Support Services Manager upon the completion of the Individual Support Services Plan. If a copy of the record has been retained by a Team member, it shall be deemed to be a record of the relevant Department/agency and shall be subject to the internal Departmental/agency policies and procedures governing the retention, maintenance and destruction of records.
- (v) As a general rule, the record of the Individual Support Services Plan will be limited to the Plan itself and will not contain any supporting documentation. If documentation is attached in support of the plan, rules governing the retention, maintenance and destruction of the Individual Support services Plan will apply
- (vi) In all cases, information which is produced or discussed at the meeting of the Individual Support Services Planning team shall be regarded as confidential and shall be shared with other Departments, agencies or service providers only to the extent necessary to give effect to the Plan. In such cases, information

sharing will be on a ‘need to know’ basis and the information so shared shall not be subject to further disclosure.

2.0 Information Sharing Procedures – Young Offenders

In accordance with the provisions of the **Young Offenders Act**, information in relation to young persons who are subject to the provisions of the **Act** may be shared without the necessity of consent of either the parent or the child in accordance with the following conditions.

2.1 Definitions

In this Part, the following definitions are adopted:

(a) Young person: “young person” means any youth between the ages of 12 and 18 who is subject to the operation of the Young Offenders Act:

(b) Youth Worker: “youth worker” means all Social Worker Positions in the Department of Human Resources and Employment or in the secure custody services of the Department of Justice;

(c) Provincial Director: “Provincial Director” means any person, group or class of persons or a body appointed or designated as Provincial Director by or pursuant to an Act of the provincial Legislature or by the Lieutenant Governor in Council or his or her delegate;

(d) Report: “Report” means any report required to be prepared by the Young Offenders Act and includes a report prepared pursuant to sections 14, 16, 16.2(3), 24(2), 24.4, 26.1(4), 26.2, 26.6, 28(7), and 32(3) or any other report.

2.2 Inspection of Records

(i) Pursuant to section 44.1 of the **Young Offenders Act**, records kept pursuant to sections 40, 41, 42, and 43 of the **Act** may be made available for inspection to any member of a governmental department or agency which is engaged in the preparation of a report pursuant to the **Act** or in the supervision or care of the young person, subject to the exceptions contained in section 45.

(ii) Any person, department or agency entitled to inspect a record may be given any information contained in the record and may be given a copy of any part of the record.

2.3 Disclosure of Information

(i) Pursuant to sections 38(1.11 and 38(1.13) of the **Young Offenders Act**, information in relation to young offenders may be disclosed

- (a) By the provincial director or youth worker where the disclosure is necessary for procuring information that relates to the preparation of any Report required by the **Act**; or
 - (b) By the Provincial Director, youth worker, peace officer or other person engaged in the provision of services to the young person where the disclosure is necessary to ensure compliance with an authorization for temporary release or with a court order; or
 - (c) By the Provincial Director, youth worker, peace officer or other person engaged in the provision of services to the young person where the disclosure is necessary to ensure the safety of staff, students or other persons, including the young person
- (ii) Any member of a Department to whom disclosure has been made pursuant to either section 38(1.11 or 38(1.13) shall co-operate with the Provincial Director, the youth worker, a peace officer or any other person, as the case may be, by providing any information which is within the possession of the agency and which may be required to prepare a report, to ensure compliance with a court order or authorization for temporary release, or to ensure the safety of staff, students or other person.
- (iii) Pursuant to sections 318(1.12) and 38(1.14) of the **Young Offenders Act**, persons who are the recipients of information which is disclosed to facilitate the preparation of a report to ensure compliance with a court order or to ensure the safety of staff, students or other persons, shall not disclose such information to any other person unless disclosure is necessary to achieve the purpose for which the information was originally shared. In such a case, any further disclosure should be made on a 'need to know' basis which respects the privacy of the young offender.

2.4 Disclosure for the Purpose of Preparation of a Report

- (i) Where pursuant to subsection 38(1.11) of the **Young Offenders Act**, information is disclosed by the Provincial Director or a youth worker to any Department for the purpose of procuring information relating to the preparation of a Report the information so disclosed shall include:
- The name and age of the young person
 - The nature of the report and the section of the **Young offenders Act** authorizing the preparation of the Report
 - The time frame in which the information is required
 - A specific description of the type of information which is requested
- (ii) Any disclosure made by the Provincial Director or youth worker for the purpose of obtaining information contained in the school record of the young

person shall be made initially to the principal of the school which is in possession of the information sought.

(iii) The disclosure by the provincial Director/youth worker shall be in writing.

2.5 Disclosure to Ensure Compliance with a Court Order or Authorization for Temporary Release

(i) Where, pursuant to subsection 38(1.13(a)) of the **Young Offenders Act**, disclosure is made by the Provincial Director, youth worker, peace officer or any other person involved in the provision of services to a young person, to any professional, including a representative of school board, school or other educational or training institution, in order to ensure compliance with a court order or an authorization for temporary release, the information so disclosed may include

- The nature of the order in respect of which compliance is sought
- The anticipated expiration date of the order
- The offence in relation to which the order has been issued
- The particular terms of the order which relate to any educational matter?
- Any matter which calls for special supervision or attention

(ii) Disclosure shall be made to the service provider who is engaged in the delivery of services to the young person and/or to the Departmental representative of the individual support services planning team if that individual is not engaged in the direct provision of services

2.6 Disclosure to ensure the safety of staff, students and other persons

(i) Where pursuant to subsection 38(1.13) of the **Young Offenders Act**, disclosure is made by the Provincial Director, a youth worker, peace officer or any other person engaged in the provision of services to the young person, to any professional or other person engaged in the supervision or care of a young person, including the representative of any school board or school or any other educational or training institution, to ensure the safety of staff, students or other persons, the information so disclosed may include:

- The nature of the offence(s) and details of any circumstances of the offence which make the notification necessary
- The type of disposition
- Any record of prior offences
- Any indicators of violent tendencies or patterns of behavior
- Any known victims or identifiable groups who could be at risk
- The expiry date of young offender status
- Any treatment programs participated in by the young offender

- Recommendations for reducing the risk of violence and increasing the level of safety
 - Patterns of behavior which may signal the onset of high risk activity
 - If more than one young person was convicted of the offence and some or all of those persons present a risk to safety, any information in relation to the interrelationship or links between the young persons
- (ii)** The need for disclosure is to be based upon the assessment of the Provincial Director, youth worker, peace officer or other person engaged in the provision of services to the young person, that the young person presents a risk of harm to the life, health, safety or security of the young person, staff, students or any other person which may be evidenced by:
- (a)** A criminal history which includes a charge or conviction in relation to a serious personal injury offence, such as but not limited to the following:
- Assault causing bodily harm or assault with a weapon
 - Sexual assault, aggravated sexual assault
 - Manslaughter
 - Illegal possession of firearms or offensive weapons
 - Arson
 - Possession of a narcotic with intent to traffic
 - Possession of explosives
 - Criminal negligence
 - Extortion
 - Uttering threats
 - Procuring for the purposes of prostitution

And/or

- (b)** Any psychiatric, psychological or other professional assessment which indicates that the young person has exhibited behavior which demonstrates an intention to do harm to self or to others. Such behaviors may include known tendencies to commit a serious personal injury offence, self-mutilation, substances abuse, depression, threats, attempted suicide and any related matters.
- (iii)** The disclosure shall be made to the person providing services to the young person and to any other person likely to be exposed to potential harm.

2.7 Confidentiality of Records

- (i) Information received by any person pursuant to subsections 38(1.11) or (1.13) of the **Young Offenders Act** shall be kept separate from any other record of the young person to whom the information relates and shall be available only to persons to whom the information is to be disclosed pursuant to subsection 38(1.12) or (1.14)
- (ii) Each Department which is a party to this Protocol will establish internal policies and procedures respecting the confidentiality and security of the information which is shared pursuant to sections 38(1.11), 38(1.13) and (44.1) of the **Young Offenders Act**.
- (iii) Information which is shared in accordance with the provisions of the **Young Offenders Act** and this **Protocol** will be used solely for the purpose of individual support services planning and will not be retained by any Department upon the conclusion of the individual support services plan.

3.0 Miscellaneous

The Departments of Education, Justice, Health and Human Resources and Employment shall provide copies of this Protocol to all members of their respective agencies who may be called upon to act in relation to the implementation of the Model for Co-ordination of Services to Children and Youth.

This Protocol shall be audited and evaluated by the representatives of the respective signatories to ensure that it is meeting the objectives set out in Section 1.1 and may be amended at the provincial level with the common consent of all signatories.

Signed on December 23, 1997 by:

Deborah E. Fry
Deputy Minister of Education

Joan Dawe
Deputy Minister of Human Resources and Employment

Lynn E. Spracklin, QC
Deputy Minister of Justice, and
Deputy Attorney General

Dr. Robert Williams
Deputy Minister of Health

WAIVER OF CONSENT

I _____ declare that I am employed by _____
(Name of Party) (Identify Department or agency)

I met with _____ on _____
(Identify individual) (Date)

for the purpose of obtaining a consent to the sharing of information for purposes of the individual support services planning process.

It is my assessment that _____ is incapable of appreciating the nature and
(Identify individual)

consequences of the required consent for the following reasons: **(Please describe)**

I therefore seek approval for the waiver of consent

DATE

SIGNATURE

Approval is hereby given for the waiver of consent to enable information to be shared for the purposes of the individual support services planning process.

SIGNATURE OF SUPERVISOR

CONSENT – RELEASE OF INFORMATION

I, _____ declare that I am: (please check appropriate box)
(name of consenting party)

- the parent/legal guardian of _____ who was born on the _____ day of _____, 19 ____; or
- I am a minor child, born on the _____ day of _____, 19 ____, who is 16 years of age or older and who has withdrawn from parental control; or
- I am 19 years of age or older.

I HEREBY GIVE MY PERMISSION to representatives of:

- _____ the Department of Health
- _____ the Department of Justice
- _____ the Department of Human Resources and Employment
- _____ the Department of Education
- _____ other (please specify)

to: _____ release to/ _____ obtain from _____
(please specify) (identify department or agency)

the following information _____
(describe information)

which is necessary for the development/implementation of the individual support services plan.

I understand that the information which is the subject of my consent shall be treated as confidential in accordance with the relevant provisions of federal/provincial law and will not be shared with any other person or agency without my consent except in accordance with such laws and with any interdepartmental protocols on the sharing of information.

This consent is given of my own free will and shall be valid for _____
(period of time)
unless withdrawn by me in writing.

(DATE)

(SIGNATURE OF CONSENTING PARTY)

(WITNESS)