February 28, 2007

Mr. Dan Wouri
South Carolina School Readiness Officer
South Carolina First Steps
1300 Sumter Street
Concord Building, Suite 100
Columbia, South Carolina 29201

Dear Mr. Wuori:

In your letter, you informed us that the First Steps to School Readiness Initiative ("First Steps") recently underwent a three-year evaluation, which prompted two questions relating to First Steps' ability to gather information about individuals benefitting from the First Steps' programs. By way of background, you informed us of the following:

> First Steps' enabling legislation establishes the initiative as "results oriented." spelling out a number of provisions relating to the outcomes-based evaluation of First Steps-funded strategies. Accordingly, First Steps collects personal data designed to help identify its clients for the purposes of longitudinal evaluation.
>
> Our most recent external evaluation revealed gaps in client level data, which prevented our researchers from drawing certain conclusions. While many clients served by First Steps are not old enough to appear within Department of Education databases, others were unable to be matched within the state's Data Warehouse due to the incomplete nature of the client data provided by families at the time First Steps services were offered.
>
> This is a serious dilemma for First Steps - one in which we must balance the privacy rights and concerns of our clients, against the initiative's stewardship of public funds and legal mandate to evaluate the outcome derived by its investments.
>
> While we have taken intermediate steps to stress the importance of full and complete client data, we continue (at present) to operate a

> system which participating clients may opt out of sharing certain identifying information, even as they receive valuable, taxpayer-funded services.

Thus, you ask "whether there are legal prohibitions against First Steps' requiring the provision of complete client data (first name, date of birth, gender, race, social security number and Medicaid number, if applicable) as a condition of receiving First Steps' programming?" In addition, you ask with regard to "First Steps-funded programs serving underage (teenage) parents, can an underage parent legally consent to the use of: 1) his/her child's client data, and 2) his/her own client data? (e.g. Can a teen parent in a parenting program consent to the use of this information, or must we seek it from the teenager's own legal guardian?)"

Law/Analysis

In our research, we did not find any law prohibiting First Steps from requiring the participants in its programs to provide personal information. In fact, upon our review of First Steps' enabling legislation, we believe the Legislature intended First Steps to have the authority to obtain a certain level of information from its clients to determine whether First Steps' initiatives are accomplished.

As our Supreme Court recently conveyed in Howell v. United States Fidelity and Guarantee. Ins. Co., 370 S.C. 505, 509, 636 S.E.2d 626, 628 (2006):

> The cardinal rule of statutory interpretation is to ascertain and effectuate the intention of the legislature. Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). In ascertaining the intent of the legislature, a court should not focus on any single section or provision but should consider the language of the statute as a whole. Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). Statutes dealing with the same subject matter are in pari materia and must be construed together, if possible, to produce a single, harmonious result. Joiner v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning. Carolina Power & Light Co. v. City of Bennettsville, 314 S.C. 137, 139, 442 S.E.2d 177, 179 (1994).

In section 59-152-10 of the South Carolina Code (2004), establishing First Steps, the Legislature describes the program as a "results-oriented initiative for improving early childhood development . . . ." Section 59-152-50 of the South Carolina Code (2004) states the Office of the South Carolina First Steps to School Readiness' responsibilities include providing "on-going data collection" and contracting for "an in-depth performance audit" every three years. S.C. Code Ann.

§ 59-152-50(6). Moreover, the enabling legislation requires First Steps County Partnerships to participate in an annual review and in the three-year evaluation process. Id. § 59-152-70(A)(7) (2004). As part of its annual report, a county partnership must include information on "the current level of effectiveness of service for young children and their families," "progress toward strategic goals," and "program effectiveness and client satisfaction before, during, and after the implementation of the strategic plan, where available . . . ." Id. These provisions indicate the Legislature's desire for First Steps' programs to be monitored for their impact on the community and specifically instructs First Steps to collect data in order to facilitate an audit of its performance.

The Legislature, in describing the purpose of the First Steps initiative, specifically states: "First Steps funds must not be used to supplant or replace any other funds being spent on services but must be used to expand, extend, improve, or increase access to services or to enable a community to begin to offer new or previously unavailable services in their community." S.C. Code Ann. § 59-152-20 (2004). No provision included in First Steps' enabling legislation requires First Steps to provide services to a particular individual or group. Furthermore, section 59-152-100 of the South Carolina Code (2004) states the services provided by First Steps Partnerships are available on a voluntary basis. Therefore, an individual's disclosure of personal information is not mandatory. The individual has a choice if they do not wish to provide personal information, they may choose not to participate in First Steps' programs.

Based on our consideration of the enabling legislation, personal information is necessary to evaluate First Steps' programs as is required in chapter 152 of title 59 of the South Carolina Code. Moreover, because participation is voluntary, participants are only required to provide personal information if they choose to participate in First Steps' programs. Thus, we believe the Legislature intended for First Steps to have the authority to gather such information presuming it serves First Steps' legislative purposes.

However, in finding First Steps has the authority to collect personal information from the participants in its programs, we alert you to the provision of the Family Privacy Protection Act contained in the South Carolina Code. S.C. Code Ann. §§ 30-2-10 et seq. (Supp. 2005). Section 30-2-20 of the South Carolina Code requires

> [a]ll state agencies, boards, commissions, institutions, departments, and other state entities, by whatever name known, must develop privacy policies and procedures to ensure that the collection of personal information pertaining to citizens of the State is limited to such personal information required by any such agency, board, commission, institution, department, or other state entity and necessary to fulfill a legitimate public purpose.

S.C. Code Ann. § 30-2-30. According to section 30-2-30 of the South Carolina Code, "personal information" includes information that identifies an individual including his or her name, date of birth, race, and social security number. S.C. Code Ann. § 30-2-30(1). The Legislature defined a

"legitimate public purpose" as "a purpose or use which falls clearly within the statutory charge or mandates of an agency, board, commission, institution, department, or other state entity." S.C. Code Ann. § 30-2-30(2).

According to the information provided in your letter, First Steps seeks to collect personal information within the meaning provided in section 30-2-30. As we determined, the accumulation of such information is essential to evaluate First Steps' performance as is required by its enabling legislation. Therefore, we believe First Steps gathers personal information about its participants to fulfill a legitimate public purpose. As such, we advise First Steps to consider the Family Privacy Protection Act and to establish privacy policies and procedures for the collection its clients' personal information.

Next, we address your questions regarding an minor parent's ability to consent to the use of his or her child's information, as well as, his or her own information. First, we consider the minor parent's ability to release their own information. In our research, we did not discover any statutory law or case law addressing a minor's authority to release personal information about themselves. Certainly, numerous provisions in our Code place limitations on the conduct of minors as a mechanism to protect minors. See, e.g., S.C. Code Ann.§ 16-17-500 (2003) (requiring individuals obtain the age of eighteen to purchase or possess tobacco products); § 20-7-8915 (Supp. 2005) (prohibiting an individual under the age of eighteen from paying a pinball machine); § 20-7-8920 (Supp. 2005) (prohibiting an individual under the age of twenty-one from purchasing or possessing alcoholic beverages). Furthermore, our Code contains provisions limiting a minor's actions unless parental consent is obtained. For example, in most instances, minors may not marry, be admitted to a methadone maintenance program, or obtain an abortion without parental consent. S.C. Code Ann. §§ 20-1-250 (Supp. 2005); 44-53-760 (2002); 44-41-31 (2002). Arguably, limiting a minor's ability to release personal information about themselves may provide some protection to them, but we find no authority to date affording minors such protection. Thus, we do not have knowledge of a legal provision preventing First Steps from gathering information from minors.

We also did not find law addressing whether parents of minor children who are themselves minors may release information regarding their children. The United States Supreme Court, in several cases, recognized a parent's fundamental right under the due process clause of the United States Constitution "to make decisions concerning the care, custody, and control of their children" Troxel v. Granville, 530 U.S. 57, 66 (2000). Currently, the Court has not qualified this right based on the fact that the parent themselves is a minor.

Moreover, we find no statutory or case law inferring the consent of a the minor parent's parent or guardian is necessary with regard to decisions involving a minor parent's child. To the contrary, our Legislature, appears to recognize minor parents has the right to make decisions regarding their children. One example is a minor parent's decision to release their child for adoption. Section 20-7-1690 of the South Carolina Code (Supp. 2005) states who must consent or relinquish their rights in order for a child to become eligible for adoption. This provision does not require the parent of the minor parent to consent to the relinquishment of a child. Moreover, this provision

specifies a minor parent cannot revoke their consent of relinquishment due to their minority. S.C. Code Ann. § 20-7-1690(E). Thus, section 20-7-1690 recognizes the decision to release their child for adoption is the minor parents' decision, which is made without the consent of his or her parent. In addition, in section 20-7-300 of the South Carolina Code (1984), the Legislature specifically gives minor parents the ability to consent to health services for their child.

Through these provisions, we gather the Legislature's intent to afford minor parents the same rights with regard to their children as their adult counterparts. However, we acknowledge neither the Legislature via statute, nor the courts have confirmed that minor parents have the right to consent to the release of information concerning their children. Therefore, while we believe our courts would recognize consent given by a minor parent as to the release of their child's information as valid, the status of a minor parent's authority in this regard is not free from doubt.

Conclusion

Based upon our reading of the legislation establishing First Steps, we believe the Legislature intended for First Steps to have the authority to obtain information from those participating in its programs in order to evaluate the impact its programs have on the communities it serves. In regard to a minor parent's ability to release information concerning themselves, we are unaware of a law prohibiting minors from releasing personal information. Furthermore, given the fact that courts recognize a parent's right to make decisions on behalf of their children and the fact that we find no law limiting that authority in the case of a minor parent, we believe minor parents have the ability to consent to the release of information pertaining to their children. However, without authority clarifying the status of a minor parents' authority over their children, we caution that a court could find otherwise.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

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