LENAPE AREA VOCATIONAL TECHNICAL SCHOOL

SECTION: PROGRAMS

TITLE: CONFIDENTIALITY OF SPECIAL EDUCATION STUDENT INFORMATION

ADOPTED: December 16, 2021

REVISED:

113.3 CONFIDENTIALITY OF SPECIAL EDUCATION STUDENT INFORMATION

1. Authority

The Joint Operating Committee recognizes the need to protect the confidentiality of personally identifiable information in the education records of students with disabilities. [1][2]

The school shall maintain a system of safeguards to protect the confidentiality of students' educational records and personally identifiable information when collecting, retaining, disclosing and destroying student special education records, in accordance with Joint Operating Committee policy, state requirements, and federal and state law and regulations. [2][3]

The rights provided by this policy apply to parents/guardians of students who receive special education programming and services implemented by the school or an outside program provided through the school.

2. Definitions

Destruction shall mean the physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable. [6]

Disclosure shall mean to permit access to or the release, transfer, or other communication of personally identifiable information contained in education records by any means, including oral, written, or electronic means, to any party except the party identified as the party that provided or created the record. [7]

Education records for purposes of this policy, shall include the records and information covered under the definition of education records in the Family Educational Rights and Privacy Act (FERPA) and is implementing regulations. [2][7][8]

Personally identifiable information includes, but is not limited to: [7][9]

1. The name of a student, the student's parents/guardians or other family members.
2. The address of the student or student's family.
3. A personal identifier, such as the student's social security number, student number, or biometric record.
4. Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name.

	5. Other information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty. 6. Information requested by a person who the school reasonably believes knows the identify of the student to whom the education record relates.
3. Guidelines	<u>Parental Access Rights</u> The school shall permit parents/guardians to inspect and review any education records relating to their child(ren) that are collected, retained, or used by the school in connection with providing or implementing special education services to the student. [10][11] The school shall comply with a parental request to inspect and review education records without unnecessary delay and before any meeting regarding an Individualized Education Program (IEP); any impartial due process hearing relating to the identification, evaluation, educational placement, or the provision of a free and appropriate public education (FAPE) to a student; a hearing related to the discipline of the student; and a resolution meeting. The school shall presume a parent/guardian has authority to inspect and review records relating to their child unless it has been provided documentation that the requesting parent/guardian does not have this authority under applicable state law. [10][12] The school shall comply with a parental request for review within forty-five (45) days following receipt of the request. [10][11] A parent's/guardian's right to inspect and review education records includes the right to: 1. A response from the school to reasonable requests for explanations and interpretations of the records; 2. Request that the school provide copies of the records if failure to provide copies would effectively prevent the parent/guardian from exercising the right to inspect and review the records; and 3. Have a representative inspect and review the records. In an education record includes information on more than one (1) student, the parents/guardians shall have access only to the information relating to their child or shall be informed of the information in the records. [13][14] The school shall provide parents/guardians, upon request, a list of the types and locations of education records collected, maintained, or used by the school. [15]

Fees

The school may charge a fee for copies of records that are made for parents/guardians so long as the fee does not effectively prevent parents/guardians from exercising their right to inspect and review those records. [16][17]

The school shall not charge a fee to search for or to retrieve information in response to a parental request.

Record of Access

The school shall keep a record of parties obtaining access to education records collected, maintained, or used in providing or implementing special education and related services to students with disabilities, except access by parents/guardians and authorized school employees. [18]

The school's record of access shall include the name of the party, the date access was given, and the purpose for which the party is authorized to use the records.

Amendment of Records Upon Parental Request

If a parent/guardian believes that information in the student's education records is inaccurate, misleading or violates the privacy or other rights of the student, the parent/guardian may request that the school amend the information. If the information in question was provided by the student's school district of residence, the school shall coordinate with the school district of residence to address a request for amendment. [19][20]

The school shall decide whether to amend the information within a reasonable period of time from receipt of the request.

If the school declines to amend the information in accordance with a parental request, the school shall inform the parent/guardian of the refusal and advise the parent/guardian of the right to a hearing.

Records Hearing

The school shall, on request, provide parents/guardians with an opportunity for a hearing to challenge information in the student's education records to ensure that the information is not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights. The school recognizes that parents/guardians who believe that there is a due process violation relating to an alleged violation of confidentiality may also request a special education due process hearing. If the information in question was provide by the student's school district of residence, the school shall coordinate with the school district of residence to address the request for a hearing. [21][22][23]

Hearing Procedures

A hearing to challenge information in education records must meet the following requirements: [24][25]

1. The school shall hold the hearing within a reasonable time after receiving the request for a hearing.
2. The school shall give the parent/guardian reasonable advanced written notice of the date, time, and place of hearing.
3. The hearing may be conducted by any individual, including a school official, who does not have a direct interest in the outcome of the hearing.
4. The school shall give the parent/guardian a full and fair opportunity to present relevant evidence. The parent/guardian may, at their own expense, be assisted or represented by one (1) or more individuals of their choice, including an attorney.
5. The school shall inform parents/guardians of its decision in writing within a reasonable period of time after the hearing.
6. The decision must be based solely on the evidence presented at the hearing, and must include a summary of the evidence and the reasons for the decision.

Result of Hearing

If, as a result of the hearing, the school decides that the information is inaccurate, misleading, or otherwise in violation of the student's privacy or other rights, the school shall amend the information accordingly and inform the parent/guardian in writing. [23][26]

If, as a result of the hearing, the school decides that the information is not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights, the school shall inform the parent/guardian of the parent's/guardian's right to place in the student's records a statement commenting on the information and/or providing any reasons for disagreeing with the school decision.

Any explanation placed in the student's records shall be:

1. Maintained by the school as part of the student's records as long as the record or contested portion is maintained by the school; and
2. Included with the record or contested portion are disclosed to any party.

Storage, Retention and Destruction of Information

The school shall store all education records and personally identifiable information of students receiving special education services in such a away as to protect the confidentiality and integrity of the records and information, prevent unauthorized access to and disclosure of records and information, and ensure compliance with other legal and regulatory requirements regarding records retention. [27]

	The school shall maintain, for public inspection, a current listing of the names and positions of those school employees who have access to personally identifiable information. [27] In order to comply with state compliance monitory requirements, the school shall maintain education records for students receiving special education services for at least six (6) years. [2] The school shall inform parents/guardians when personally identifiable information collected, maintained, or used is no longer needed to provide educational services to the student. After notice, such information shall be destroyed upon parental request. [28] No education record shall be destroyed if there is an outstanding request to inspect or review the record or if a litigation hold exists. [11] The school shall maintain a permanent record of the student's name, address, and phone number, grades, attendance record, classes attended, grade level or program completed, and year completed. [28] The school shall ensure the destruction of education records in a manner that protects the confidentiality and privacy rights of the student and the student's family. [27] <u>Disclosure to Third Parties</u> The school shall obtain shall obtain parental consent before disclosing personally identifiable information to parties other than school officials with a legitimate educational interest or other educational institutions that provide special education services to the student for the purposes of meeting a requirement of law or regulations unless the information is contained in education records and the disclosure is permitted without parental consent under law and regulations. [2][29][30][31][32][33][34] Parental consent must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services. [30] <u>Disclosure to Law Enforcement</u> When reporting an incident committed by a student with a disability to the appropriate authorities, in accordance with applicable law, regulations and Joint Operating Committee policy, the school shall provide the information required by state and federal laws and regulations and shall ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by these authorities. The school shall ensure compliance with the Family Educational Rights and Privacy Act when transmitting copies of the student's special education

	and disciplinary records. [2][8][33][35][36][37][38][39][40][41][42]
3. Delegation of Responsibility	In order to maintain the confidentiality of the educational records and personally identifiable information of students with disabilities, the Joint Operating Committee designates the Administrative Director or appropriate personnel designated by the Administrative Director to coordinate the school's efforts to comply with this policy and applicable laws and regulations. [27] All school employees collecting or using personally identifiable information shall receive training or instruction regarding Joint Operating Committee policy, administrative regulations, and state and federal law and regulations regarding confidentiality of education of records and personally identifiable information. Legal References: 1. Pol. 113 2. Pol. 216 3. 34 CFR 300.611-300.627 4. 34 CFR 300.520 5. 34 CFR 300.625 6. 34 CFR 300.611 7. 34 CFR 99.3 8. 20 U.S.C. 1232g 9. 34 CFR 300.32 10. 34 CFR 300.613 11. 34 CFR 99.10 12. 34 CFR 99.4 13. 34 CFR 300.615 14. 34 CFR 99.12 15. 34 CFR 300.616 16. 34 CFR 300.617 17. 34 CFR 99.11 18. 34 CFR 300.614 19. 34 CFR 300.618 20. 34 CFR 99.20 21. 34 CFR 300.510-300.516 22. 34 CFR 300.619 23. 34 CFR 99.21 24. 34 CFR 300.621 25. 34 CFR 99.22 26. 34 CFR 300.620 27. 34 CFR 300.623 28. 34 CFR 300.624 29. 34 CFR 300.154 30. 34 CFR 300.622 31. 34 CFR 99.30 32. 34 CFR 99.31 33. Pol. 113.1 34. Pol. 113.2 35. 20 U.S.C. 1415 36. 22 PA Code 10.2 37. 22 PA Code 10.21 38. 22 PA Code 10.22 39. 22 PA Code 10.23 40. 34 CFR 300.535 41. 34 CFR Part 99 42. Pol 815.1 20 U.S.C. 1400 et seq 34 CFR Part 300 Pennsylvania Department of Education Individuals With Disabilities Education Act Part B LEA Policies and Procedures under 34 CFR §§300.101-300.176 (2018) Bureau of Special Education Letter to School Entities on Retention of Records, Dated November 9, 2009