SAN MATEO COUNTY SPECIAL EDUCATION LOCAL PLAN AREA (SELPA)

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Guidance Regarding the Use of AI Tools in Confidential Meetings

As technology continues to evolve at an unprecedented pace, the San Mateo County Special Education Local Plan Area (the "San Mateo SELPA") remains committed to assessing and adapting its procedures, policies, and safety measures to meet the demands of this rapidly changing digital landscape. This is particularly true with the emergence and rapid development of generative artificial intelligence, or deep-learning models that generate content such as images, text, videos, or other media in response to prompts inputted by a user, which has the potential to fundamentally transform how people work and learn. To the extent member Local Education Agencies ("LEAs") within the San Mateo SELPA intend to allow their staff and students to use generative Artificial Intelligence ("AI"), the San Mateo SELPA encourages LEAs to use AI in an ethical, transparent, and responsible manner while simultaneously acknowledging and accounting for the risks of potential misuse and the harm that can result from irresponsible implementation.

The San Mateo SELPA encourages LEAs to solicit input from educational partners and develop reasonable and defensible policies regarding the use of AI in educational programs.

Privacy and Data Security

Employees must be aware that the use of generative AI tools raises significant privacy concerns that require careful consideration. This includes using generative AI tools to record, transcribe, translate, take notes of, and summarize meetings, among other potential uses. When employees input information into AI platforms, that data may be stored, processed, and/or used by the AI provider for training purposes, potentially exposing sensitive information beyond the district's control and in ways that are not fully transparent or compliant with federal and/or California privacy laws. Employees should be cognizant of and comply with applicable federal and state data privacy laws and any other applicable legal requirements.

Personally Identifiable Information or "PII" includes information that can be used to distinguish or trace an individual's identity either directly or indirectly through linkages with other information, such as personnel information, student information, and/or medical information. Employees should assume that any information entered into generative AI tools may not remain confidential, and should think carefully about information they are inputting into an AI program before doing so. In addition, the accuracy and security of information captured by generative AI tools cannot be guaranteed at this time, which may lead to the unauthorized disclosure of student information.

Notably, the use of generative AI technology during confidential meetings, such as IEP meetings, raises concerns regarding compliance with the Family Educational Rights and Privacy

Act ("FERPA") and the Individuals with Disabilities Education Act ("IDEA"), both of which safeguard the privacy of student information. Some technology vendors may be permitted access to student data under FERPA's "School Official" exception, which allows the sharing of student data when the vendor has a legitimate educational interest. However, sharing student data is only permitted as needed to fulfill the purpose of the agreement with the vendor. Because AI may use information to populate its knowledge base and improve accuracy, the information input into an AI tool may be used in a manner that violates FERPA and/or IDEA.

Employees must be aware that prompts used or outputs received in connection with generative AI systems may be subject to disclosure under the California Public Records Act, as this information could be considered public records. Employees should treat all AI interactions as potentially discoverable through public records requests and should limit inputs to information that would be appropriate for public disclosure.

It is recommended that LEAs use AI systems that regularly audit and update themselves to secure AI systems against unauthorized access and data breaches.

To ensure accurate, secure recordings, and compliance with FERPA, LEAs may decide instead to rely on digital audio recorders and manual note taking, which offer more control over student data privacy compared against generative AI platforms. Of course, LEAs should ensure that proper data storage and access controls are in place to safeguard student information.

Six Key Items to Remember:

1. Human Oversight: All AI-generated content must be thoroughly reviewed, revised, and fact-checked before use or distribution, as AI platforms can produce inaccurate, biased, and/or inappropriate material. Proofread content thoroughly and do not copy and paste AI-generated output without careful scrutiny. Employees remain fully responsible for ensuring the accuracy, appropriateness, and quality of any work that incorporates AI assistance, regardless of the extent to which AI tools were utilized in its creation. Be mindful that inaccuracies or incomplete information, whether generated by AI or not, can have significant consequences for students' educational plans and legal rights, hindering effective communication and informed decision-making during the IEP process.

2. Privacy and Security: Employees should be aware that any PII, student records, confidential data, or sensitive institutional information that is entered into generative AI tools may be stored, shared, and/or used to train future AI models. To the extent LEAs permit the use of generative AI tools during IEP meetings or other meetings where PII or other confidential information is discussed, staff should exercise caution and be vigilant about the protection of such information. Staff should evaluate whether audio recording or manual note-taking is more appropriate for these meetings.

3. Critical Thinking: AI should be used as a tool to support and enhance human thinking, not as a substitute for critical analysis, original thought, or professional judgment.

4. Appropriate Programs: Before AI tools are used, they should be carefully

evaluated for privacy compliance and educational appropriateness to ensure that they meet educational objectives and are suitable for the specific learning environment.

5. Transparency and Attribution: Parents should be aware if AI tools are being used during confidential meetings, and knowing consent should be provided before any such usage.

6. Establish Clear Boundaries and Guidelines: LEAs need comprehensive policies that define appropriate AI use cases, prohibited applications, and consequences for misuse, along with regular training to keep staff updated as to evolving best practices.

Parental Consent

The San Mateo SELPA encourages LEAs to be transparent with parents regarding the use of AI tools in education. If AI tools are to be used during any confidential meeting involving a parent, the San Mateo SELPA recommends that the responsible personnel ensure that the parent has provided informed consent for the use of the AI tool, preferably in writing.

As a reminder, notwithstanding Section 632 of the Penal Code, the parent or guardian or local educational agency shall have the right to audio record the proceedings of IEP meetings. The parent or guardian or local educational agency shall notify the members of the IEP team of his, her, or its intent to audio record a meeting at least 24 hours prior to the meeting. If the local educational agency initiates the notice of intent to audio record a meeting and the parent or guardian objects or refuses to attend the meeting because it will be audio recorded, the meeting shall not be audio recorded. (Ed. Code § 56341.1(g)(1).)

Under federal law, audio recordings made by a local educational agency are subject to FERPA and the confidentiality requirements set forth in 34 C.F.R. §§ 300.610 et seq.

Conclusion

The San Mateo SELPA remains committed to utilizing technology responsibly to improve educational services while prioritizing student privacy. We will continue to monitor developments in the use of AI tools as regulations and safeguards are established to ensure full compliance with California and federal privacy laws. The San Mateo SELPA stresses the importance of human oversight and review of any AI generated content. AI should be used as a tool to support and enhance human thinking, not as a substitute for critical analysis, original thought, or professional judgement.

For further information on IEP meetings, record keeping, and student privacy rights, please contact selpa@smcoe.org. You can also learn more about FERPA at https://www2.ed.gov/ferpa.

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