

**APPENDIX B**

**§300.221**

**INTERMEDIATE UNIT 20:**

**RECORD POLICY FOR EXCEPTIONAL CHILDREN**

## RECORD POLICY FOR EXCEPTIONAL CHILDREN

### STATEMENT OF POLICY

The Colonial Northampton Intermediate Unit recognized the need to protect the confidentiality of personally identifiable information in the education records of exceptional children. This policy has been prepared so as to insure the privacy rights of both the parents and the exceptional child in the collection, maintenance, release and destruction of these records. Toward that end, this policy incorporates provisions from the Regulations of the State Board of Education of Pupil Records (Pa. Code 22, Ch. 12), the Family Educational Rights and Privacy Act of 1974, the Confidentiality Section of P.L. 94-142 and the Confidentiality Standards for Special Education (Pa. Code 22, Ch. 342), and the requirements of 34 CFR 300.560 thru 300.576. Annually, all constituent school districts issue a notice of child find activities which includes the provisions of 300.561, 300.128, and 300.129.

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*Note: If the IU issues the annual notice for all constituent districts, the last sentence should be altered to reflect that fact.*

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The Colonial Northampton Intermediate Unit will review and update this educational records plan as necessary. Any changes will be submitted to PDE for approval.

### DEFINITIONS:

"Directory information" includes the student's name, address, telephone number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height if member of athletic team, dates of attendance, degrees and awards received, most recent previous educational agency or institution attended by the student, and other similar information.

"Disclosure" means permitting access or the release, transfer, or other communication of educational records of the student or the personally identifiable information contained therein, orally or in writing, or by electronic means, or by any other means to any party.

"Destruction" means the physical destruction or permanent removal of personally identifiable data from the education records of a student so that the information in these records is no longer personally identifiable.

**"Educational Records"**

1. Means those records which
  - A. Are directly related to a student and
  - B. Are maintained by an educational agency or institution or by a party acting for the agency or institution.
2. Does not include
  - A. Records of instructional, supervisory, and administrative personnel and education personnel ancillary thereto which
    - I. Are the sole possessions of maker thereof and
    - II. Are not accessible or revealed to any other individual except a substitute. For the purpose of this definition, a "substitute" means a person who performs on a temporary basis the duties of the person who made the record.
  - B. Records of an educational agency or institution which contain only information relating to a person after that person was no longer a student at the educational agency or institution. An example would be information collected which pertains to the accomplishments of its alumni.
  - C. Records relating to an eligible student which are
    - I. Created or maintained by a physician, psychiatrist, psychologist or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in that capacity.
    - II. Created, maintained or used only in connection with the provision of treatment to the student and
    - III. Not disclosed to anyone other than individuals providing the treatment, provided that the records can be personally reviewed by a physician or other appropriate professional of the student's choice. For the purpose of this definition, "treatment" does not include remedial educational activities or activities which are a part of the program of instruction at the educational agency or institution.

**"Educational agencies"** means a school district or an Intermediate Unit, an approved private school, the Department of Education, or the Scranton State School for the Deaf and any component parts thereof which collect, maintain, or use the exceptional student's education records containing personally identifiable information or from which such records or information is obtained.

**"Legitimate education interest"** describes a purposeful educational involvement with a student in which there is direct responsibility for providing instruction or support services.

**"Parent"** includes a parent, a guardian, or an individual acting as a parent of a student in the absence of a parent or guardian. An educational agency or institution may presume the parent has the authority to exercise the rights inherent in the Family Education Rights and Privacy Act unless the agency or institution has been provided with evidence that there is a state law or court order governing such matters as divorce, separation or custody, or a legally binding instrument which provides to the contrary.

**"Personally identifiable information"** means that data or information includes

1. Name of student
2. Name of student's parent or other family member
3. A personal identifier, such as social security number of student number
4. A list of personal characteristics which would make the student's identity traceable, or
5. Other information which would make the student's identity easily traceable.

**"Record"** means any information or data recorded in any medium, including, but not limited to, handwriting, print, tapes, film, microfilm and microfiche.

**"School officials"** refer to administrators, teachers, and other professional personnel who have legitimate educational interest and are directly responsible for the instruction or the health and safety of students while in attendance at school.

**"Student"** means exceptional school age person or pre-school pupil, as defined in Pennsylvania Standards for Special Education (Chap. 341) with respect to whom an educational agency maintains education records.

#### **I. Responsibility and Authority**

The records of students enrolled in Intermediate Unit-administered classes shall be filed where supervisor is housed with duplicate copy at the Intermediate Unit and shall be available only to authorized personnel with the approval of the program supervisor, building principal, or their designates. Overall responsibility for implementation of this policy will rest with the Executive Director and the Director of Pupil Personnel Services.

## II. Collection of Data

- A. No data shall be collected from students without the prior informed consent of the student and the parent. Such consent may be given either individually or through the legally elected or appointed representatives (the Board of Education), depending on the nature of the information to be collected.
- B. Representational consent will be sufficient in the collection of aptitude and achievement scores, whether standardized or informal, and reporting of skill and knowledge outcomes in subject-matter areas within the curricula of the school.
- C. Individual consent
  - 1. Individual consent is necessary for collection of personality testing and assessment data.
  - 2. Under conditions where it is not always possible to obtain the separate consent of every parent or eligible student for every data-gathering process, the approval by appropriately elected representatives, whether a legislative, school board, or other body, will in some situations satisfy the principle of consent.
  - 3. In all situations where individual consent is to be obtained, it will be obtained in writing.
  - 4. Where individual consent is required, the student's consent shall also be obtained when he or she is reasonably competent to understand the nature and consequences of his or her decision.
- D. No statement of consent, whether individual or representational, shall be binding unless it is freely given after the parent or eligible student has been fully informed as the methods by which the information will be collected and the uses to which it will be put.
- E. In situations in which representational consent is sufficient, eligible students and parents shall be informed by school officials of the purposes and character of the data collection.
- F. Information pertaining to consent and the consent form will be presented in the native language of the parent or student.

## III. Classification of Records

Initiation of education records

An official student record shall be initiated by the Intermediate Unit or school first attended and shall be maintained by the program supervisor under the security and responsibility of the building principal, program supervisor, or their designates. Information collected shall include personal and family data.

A. The official student record

1. Types of data included

a. Administrative data

Minimum data will be kept concerning achievement, evaluation, and attendance and shall be maintained in the official student record. This shall include such items as name of the student, sex, place and date of birth, name of parent, address, telephone number, academic credits earned, attendance date, and enrollment dates.

b. Supplementary data (certified data of clear importance)

1. The medical record is considered part of the official student record and shall be placed in the student's file when he or she leaves the school system. Prior to the student's leaving, medical records may be maintained by the school nurse or other medical personnel.
2. Standardized intelligence and aptitude test scores, interest inventory results, health data, family background information, and teacher or counselor ratings and observations may be included in the official student record. Service awards, achievements, volunteer services in schools or community, part-time work, and other items considered enhancing to the student may be recorded in the official student record. Verified reports of serious and recurrent behavior problems and verified reports of constructive acts also may be included in the official student record.
3. A parent or eligible student may request that specific data be placed in the official student record. If such information is verified and of recognized relevance it may be added to the record. If the teacher or counselor refuses to

accept the material, the parent or eligible student may appeal to the principal for a decision.

4. A parent or eligible student may submit a statement concerning any material in the official student record. Such a statement shall be dated and signed and shall be kept in the record as long as the date it concerns remains in the official record.

#### **B. Professional Notes**

The professionals who are directly involved with the student's health, education, and welfare may maintain personal and confidential files containing notes, transcripts of interviews, clinical diagnoses, and other memory aides for their own use. Such data are to be considered confidential and treated as such. All such data must be destroyed when their usefulness is no longer apparent or when the student leaves the school system. Professional notes are not considered educational records.

### **IV. Inspection and Disclosure of Records**

#### **A. Right to inspect or examine official student records**

##### **1. Parent or student**

- a. A parent or eligible student shall be permitted to examine the contents of the official student record in the presence of a teacher, counselor, or administrator. Such requests must be honored within thirty days.
- b. In the event that parents of a student are separated or divorced, either or both parents may have access unless a legal restraining order prohibits such access to a particular parent.
- c. All requests to inspect or examine records must be properly addressed to the professional responsible. A mutually agreeable time, not to exceed thirty days, shall be set for honoring such requests.
- d. Parents and students will be informed periodically of the contents of student records and their right of access to them. Parents and eligible students should be given an explanation and interpretation of the records upon reasonable requests.

- e. Where records relate to more than one student, all names and information relating to other students shall be obliterated during the inspection and review thereof.

2. Disclosure of records without written consent

- a. Data from the official student record may be released without student/parent consent to:

1. The professional staffs of the Intermediate Unit who have been determined to have a legitimate educational interest, including certified teachers, administrative personnel, counselors, speech therapists, psychologists, case and social workers, nurses, school physician, and dental hygienist. Specifically excluded are student teachers and aides. Written consent must be obtained by student teachers for the preparation of case histories to fulfill college requirements.
2. The officials of another school system in which the student intends to enroll, upon condition that reasonable effort be made to notify the parent or eligible student of the material to be disclosed and of their right to obtain copies of the material to be disclosed and to request amendment of the records.
3. Federal and state officials for the purpose of an audit and evaluation of federally supported education programs or for enforcing or complying with federally legal requirements which relate to these programs. Information provided shall contain the minimum necessary information that is personally identifiable, and such information shall be destroyed upon completion of such audit, evaluation, enforcement, or compliance.
4. Persons or agencies in connection with an emergency if knowledge of the information is necessary to protect the health or safety of the student or other individuals. Personally identifiable information may be disclosed only if the following conditions are present:
  - a. The seriousness of the threat to the health or safety of the student or other individuals.

- b. The need for the information to meet the emergency.
  - c. The parties to whom the information is disclosed are in a position to deal with the emergency, and
  - d. The extent to which time is of the essence in dealing with the emergency.
5. Persons or agencies in compliance with a judicial order to pursuant to any lawfully issued subpoena. The parent or eligible student shall be notified of all such orders and the Intermediate Unit's compliance. The parent or eligible student may receive a copy of the information to be released if desired. Copies will be provided at the actual cost of reproduction.
- b. Whenever the school district of residence, Intermediate Unit, or the Department of Education requests the release of information, an approved private school must comply with the request within seven days of receiving the request.
  - c. When a school district in which the student is enrolled or intends to enroll requests the release of information, the Intermediate Unit will comply with the request within seven days of receiving the request.
  - d. The school may provide anonymous data from its records, including the official student record, for research purposes without consent under conditions where there is no likelihood of identifying any individual.
  - e. Directory information will be released without consent except when the parent or eligible student has requested that such information not be disclosed. The parent or eligible student will be notified prior to disclosure and will have ten days to respond.
  - f. Lists identifying names and addresses of students shall not be released to any outside agency.

**B. Right to inspect or examine records**

- 1. Parent or eligible student:  
The access is the same as for official student records (page 6).
- 2. Without written consent of parent or eligible student:

No records may be released without written consent of the parent or eligible student, except as specified below:

- a. Information from psychological evaluations may be released without written consent to authorized school personnel in the Intermediate Unit service area only.
- b. Psychological reports shall not follow a student from the Intermediate Unit service area to other attendance areas without written consent, except in situations where such reports are necessary for educational placement or for the student's health and welfare.

**C. Requests for inspection and disclosure**

1. Any outside agencies or individuals gaining access to official student records shall sign a written form which shall be kept with the official student record but only for inspection by the parent or eligible student. This form shall indicate the specific legitimate educational or other interest such person or agency has in seeking the information, the identity of the signer, and the date upon which access was given.
2. The Executive Director of the Delaware County Intermediate Unit shall maintain a current listing of the names and positions of those school officials who are authorized to have access to personally identifiable information in the educational records of exceptional children.

**D. Consent to inspection and disclosure**

1. Whenever records herein are inspected or disclosed upon written consent, it shall be only under the following circumstances:
  - a. The consent must be given by the parent or eligible student.
  - b. The written consent must be dated and signed by the parent or eligible student and must specify the information to be disclosed, the reasons for such disclosure, and to whom it is to be disclosed. Blanket or continuing permission for inspection or disclosure of information will not be accepted.
2. Whenever records are released under compulsion of law or when directed by any lawfully issued subpoena, the order or subpoena shall first be inspected by the school solicitor, and in such event there will be no prior inspection of the record by the requesting party. The parent or eligible student shall be notified of all such orders and subpoenas in advance of compliance.

V. Maintenance and Destruction of Records

A. Periodic review and deletion of data

1. Parents and students will be notified annually of the policies and procedures of the school regarding student educational records, the data collected through representational consent, the conditions for disclosure of information, access rights of parent or student to educational records, the notice of where the pupil records policy may be obtained.
2. The Intermediate Unit shall provide effective notification to the parent or student identified as having a primary or home language other than English.

B. Periodic deletion of data

1. Parent shall be informed when personally identifiable information in the records is no longer relevant to and necessary for provision of educational services to the student.
2. Upon request of the parent, information no longer relevant to or necessary for the provision of educational services to the student will be destroyed. However, a written record of a student's name, address, phone number, grades, attendance record, classes attended and grade level completed must be maintained for at least one hundred years beyond the date the student attains the age of twenty-one.
3. Prior to the destruction of information referred to in Paragraph 2, the Delaware County Intermediate Unit shall send written notification to the parent which shall inform them of their right to receive a copy of the material originated by the Intermediate Unit to be destroyed.
4. No educational records will be destroyed that contain information necessary for the education of the student who is enrolled or has been enrolled in an educational program operated by the Intermediate Unit.

C. Longevity of data

1. Administrative data shall be maintained by the Intermediate Unit for a period of at least one hundred years beyond the date the student attains the age of 21.

2. Professionals shall eliminate unnecessary supplementary data at periodic intervals. In any case, the student's medical record shall not be destroyed for a period of at least five years after the student ceases to be enrolled in an Intermediate Unit program. Exceptions may be made where, under rigorous standards and impartial judgment, good cause for their retention can be shown.

D. Location of Records - See Appendix A

#### VI. Amendment of Records

- A. A parent of student who believes that information contained in the educational records of the student is inaccurate or misleading or violates the privacy or other rights of the student may request to program supervisor that the records be amended.
- B. Program Supervisors will arrange to meet with the parents to discuss the issue within ten (10) working days.
- C. The Director of Pupil Services shall decide whether to amend the disputed information within forty-five (45) days after the receipt of the request to amend.
- D. If the Director of Pupil Services agrees to amend the disputed information, the parent or student shall be notified in writing.
- E. If the Director of Pupil Services decides not to amend the education records in accordance with the request of the parent, the Director will inform the parent or student in writing of the refusal, the reason(s) for that refusal, and shall provide further notification of their right to request and receive a records review hearing.

#### VII. Records Review Hearings

- A. The parent or eligible student shall have an opportunity for a hearing to challenge the contents of student records, official and provisional, to ensure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of the student, and to provide an opportunity for the correction or deletion of any inaccurate, misleading, or otherwise inappropriate data contained therein.
- B. The Executive Director of the Intermediate Unit shall appoint a quasidicial review panel composed of professional personnel and nonschool personnel to provide for hearing challenges to data in student records.
- C. The Records Review Hearing shall be held within thirty days after the request has been received, and notice of the date, place, and time will be

given to the parent or eligible student reasonable in advance of the hearing.

- D. The parent shall be afforded a full and fair opportunity to present evidence relevant to the issues raised, and may be assisted or represented by individuals of his or her choice, including an attorney, at his or her own expense.
- E. The decision of the hearing panel shall be based solely upon the evidence presented at the hearing and shall include a summary of the evidence and the reasons for the decision. This decision will be rendered in writing within thirty days after conclusion of the hearing. A copy of the decision will be retained in the official student record.
- F. The parent shall have the right to place an explanation pertaining to a hearing in the official student record, if the decision rendered is not to amend the education records.

#### VIII. Implementation

- A. Directors, supervisors, building principals, or designated professional personnel will screen all student records to eliminate any materials in contradiction to this policy statement.
- B. Items removed from the file during the screening process must be destroyed.
- C. Upon adoption of this policy by the Intermediate Unit Board of School Directors:
  - 1. Parents and students who wish to file complaints with regard to compliance with this policy may do so by contacting the Executive Director. If further appeal is necessary, the parent or student may contact the Family Education Rights and Privacy Act Office, Department of Health, Education, and Welfare, 330 Independence Avenue SW, Washington, D.C. 20201.
  - 2. This Student's Records Policy is on file with the Executive Director of the Intermediate Unit and all program administrators. Copies are available upon request to the Director of Pupil Services.
- D. Professional staff will be informed of this policy through in-service education.

Appendix A

LOCATION OF RECORDS

<u>RECORDS</u>	<u>LOCATION</u>	<u>RESPONSIBLE PROFESSION</u>
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NONPUBLIC PROGRAM

Attendance	Learning Center	Center Leader/Teachers
Educational	Learning Center	Center Leader/Teachers
Psychological	I.U. Office	Psychologists

SPECIAL EDUCATION PROGRAM

Attendance	Supervisor's Office or Teacher's Station	Supervisor/Teacher
Education and Health Supervisor's Office	Supervisor/Teacher or Teacher's Station	Specialist/Counselor/Nurse
Psychological	Supervisor/Psychologist Office	Psychologists
IEP's	Supervisor's Office or Teacher's Station	Supervisor/Teacher

VOCATIONAL-TECHNICAL PROGRAM

Attendance	Principal's Office	Principal
Discipline	Principal's Office or Supervisor's Office	Principal/Supervisor
Educational	Principal's Office or Guidance Office	Principal/Counselor/Teacher
Health	Nurse's Office	Nurse
Placement	I.U. Vo-Tech Office	Placement Office/Co-op Coordinator