



Book	BHASD Policies
Section	100 Programs
Title	Confidentiality of Special Education Student Information
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### **Authority**

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

The district 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 Board policy, state requirements, and federal and state law and regulations.[2]

The rights provided by this policy apply to parents/guardians of students who receive special education programming and services from the district or an outside program provided through the district.[3][4]

### **Definitions**

**Destruction** shall mean the physical destruction or removal of personal identifiers from information so that the information is no longer personally identifiable.[5]

**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.[6]

**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 its implementing regulations.[7][6][8]

**Personally identifiable information** includes, but is not limited to:[6][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 district reasonably believes knows the identity of the student to whom the education record relates.

## **Guidelines**

### Parental Access Rights

The district shall permit parents/guardians to inspect and review any education records relating to their child(ren) that are collected, retained, or used by the district in connection with providing special education services to the student.[\[10\]](#)[\[11\]](#)

The district 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 district shall presume a parent/guardian has authority to inspect and review records relating to his/her child unless it has been provided documentation that the requesting parent/guardian does not have this authority under applicable state law.[\[12\]](#)[\[11\]](#)

The district 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 district to reasonable requests for explanations and interpretations of the records;
2. Request that the district 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.

If 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 record.[\[13\]](#)[\[14\]](#)

The district shall provide parents/guardians, upon request, a list of the types and locations of education records collected, maintained, or used by the district.[\[15\]](#)

### Fees

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

### Record of Access

The district shall keep a record of parties obtaining access to education records collected, maintained, or used in providing special education to students with disabilities, except access by parents/guardians and authorized district employees.[\[18\]](#)

The district'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 district amend the information.[\[19\]](#)[\[20\]](#)

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

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

### Records Hearing

The district 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 district 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.[\[21\]](#)[\[22\]](#)[\[23\]](#)

### Hearing Procedures

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

1. The district shall hold the hearing within a reasonable time after receiving the request for a hearing.
2. The district shall give the parent/guardian reasonable advanced written notice of the date, time, and place of the hearing.
3. The hearing may be conducted by any individual, including a district official, who does not have a direct interest in the outcome of the hearing.
4. The district shall give the parent/guardian a full and fair opportunity to present relevant evidence. The parent/guardian may, at his/her own expense, be assisted or represented by one (1) or more individuals of his/her choice, including an attorney.
5. The district 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 district decides that the information is inaccurate, misleading, or otherwise in violation of the student's privacy or other rights, the district shall amend the information accordingly and inform the parent/guardian in writing.[\[21\]](#)[\[26\]](#)

If, as a result of the hearing, the district decides that the information is not inaccurate, misleading, or otherwise in violation of the student's privacy or other rights, the district 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 district's decision.

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

1. Maintained by the district as part of the student's records as long as the record or contested portion is maintained by the district; and

2. Included with the record or contested portion if the record or contested portion are disclosed to any party.

### Storage, Retention and Destruction of Information

The district shall store all education records and personally identifiable information of students receiving special education services in such a way 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 district shall maintain, for public inspection, a current listing of the names and positions of those district employees who have access to personally identifiable information.[27]

In order to comply with state compliance monitoring requirements, the district shall maintain education records for students receiving special education services for at least six (6) years.[8]

The district 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.[10]

The district may maintain a permanent record of the student's name, address, and phone number, his/her grades, attendance record, classes attended, grade level completed, and year completed.[28]

The district shall ensure the destruction of education records in a manner that protects the confidentiality and privacy rights of the student and his/her family.[27]

### Disclosure to Third Parties

The district shall obtain parental consent before disclosing personally identifiable information to parties other than school district 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 regulation unless the information is contained in education records and the disclosure is permitted without parental consent under law and regulations.[29][30][31][32][33][34][8]

Parental consent must be obtained before personally identifiable information is released to officials of participating agencies providing or paying for transition services.[32]

If a student is enrolled, or is going to enroll in a private school that is not located in the district of the parent's/guardian's residence, parental consent must be obtained before any personally identifiable information about the student is released between officials in the district where the private school is located and officials in the district of the parent's/guardian's residence.[32]

### **Delegation of Responsibility**

In order to maintain the confidentiality of the educational records and personally identifiable information of students with disabilities, the Board designates the Superintendent or Director of Pupil Services to coordinate the district's efforts to comply with this policy and applicable laws and regulations.[27]

All district employees collecting or using personally identifiable information shall receive training or instruction regarding Board policy, administrative regulations, and state and federal law and regulations regarding confidentiality of education records and personally identifiable information.[27]

Legal

1. Pol. 113
  2. 34 CFR 300.611-300.627
  3. 34 CFR 300.520
  4. 34 CFR 300.625
  5. 34 CFR 300.611
  6. 34 CFR 99.3
  7. 20 U.S.C. 1232g
  8. Pol. 216
  9. 34 CFR 300.32
  10. 34 CFR 99.10
  11. 34 CFR 300.613
  12. 34 CFR 99.4
  13. 34 CFR 99.12
  14. 34 CFR 300.615
  15. 34 CFR 300.616
  16. 34 CFR 99.11
  17. 34 CFR 300.617
  18. 34 CFR 300.614
  19. 34 CFR 99.20
  20. 34 CFR 300.618
  21. 34 CFR 99.21
  22. 34 CFR 300.510-300.516
  23. 34 CFR 300.619
  24. 34 CFR 99.22
  25. 34 CFR 300.621
  26. 34 CFR 300.620
  27. 34 CFR 300.623
  28. 34 CFR 300.624
  29. 34 CFR 99.30
  30. 34 CFR 99.31
  31. 34 CFR 300.154
  32. 34 CFR 300.622
  33. Pol. 113.1
  34. Pol. 113.2
- 20 U.S.C. 1400 et seq
- 34 CFR Part 99
- 34 CFR Part 300

Bureau of Special Education Letter to School Entities on Retention of Records, Dated November 9, 2009

Pennsylvania Department of Education Individuals With Disabilities Education Act Part B LEA Policies and Procedures under 34 CFR §§300.101 - 300.176 (2009)

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