



Special Education Advisory Committee

Draft Policy 8640

DISCLOSURE OF STUDENT PERSONALLY IDENTIFIABLE
INFORMATION

Review and Recommendations Summary

February 8, 2023

Prepared For:
SEAC Membership
Special Education Community
Loudoun County School Board

Overview: Policy and Regulation 8640

DISCLOSURE OF STUDENT PERSONALLY IDENTIFIABLE INFORMATION

Loudoun County School Board understands the value and need for every student's right and expectation of privacy with respect to their Personally Identifiable Information (PII). Currently LCPS must comply with the Family Educational Rights and Privacy Act (FERPA), however, this regulation was created in 1974. When this regulation was created, they were operating under the assumption of paper records only. There have been 11 amendments since then to update the regulation, but it has been 15 years since an amendment was implemented to address changes in technology with respect to students and student records. LCPS understands that the United States is moving toward stronger overarching privacy laws to include the Virginia Consumer Data Protection Act (VCDPA). While the VCDPA does not apply directly to LCPS, it sets standard level of expected privacy protections that should be afforded to Loudoun County residents, especially with respect to children's data.

Additionally, there are common industry standards and frameworks that outline minimum levels of privacy and security controls that should be in place when handling PII. Some applicable standards that are recognized and required by the Federal government for their systems and data are the National Institute of Standards and Technology (NIST) Security and Privacy Controls for Information Systems and Organizations 800-53 Rev. 5; NIST Guidelines for Media Sanitization 800-88 Rev.1, NIST Privacy Framework, and Fair Information Practice Principles (FIPPs). LCPS recognizes that these frameworks provide standard practices for data handling and aligning to these will provide enhanced security and privacy for student PII.

LCPS determines the student PII required to provide services to the student and family. As such it has an obligation, as a custodian of the data, to not disclose this data unless required or with consent. The unauthorized or unneeded disclosure of PII can have devastating impacts such as identify theft that can go undetected for years, access to children's location leading to potential crimes, and discrimination of students.

The Special Education Advisory Council (SEAC) recognizes the implications of those risks for the general population of students but understands that the impacts of this can be greater for those with special needs and disabilities. The disclosure of PII related to a student, their disability, and/or accommodations presents risks of discrimination for access to employment, higher education, or outside activities and bullying both within the school and outside of the school.

The new resources include:

- [Virginia Consumer Data Protection Act](#)

- [Family Educational Rights and Privacy Act](#)
- [National Institute of Standards and Technology \(NIST\) Security and Privacy Controls for Information Systems and Organizations 800-53 Rev. 5](#)
- [National Institute of Standards and Technology \(NIST\) Privacy Framework](#)
- [National Institute of Standards and Technology \(NIST\) Guidelines for Media Sanitization 800-88 Rev. 1](#)
- [Fair Information Practice Principles \(FIPPs\)](#)

SEAC has provided recommendations below to strengthen the protections and provisions around the disclosure of student PII to align further with FERPA, the VCDPA, and Industry Standards (NIST 800-53 rev 5, NIST 800-88 Rev. 1, NIST Privacy Framework, and FIPPs) to provide stronger protections for our students without impeding the requirements and needs of LCPS use student PII.

The Regulations Governing Special Education Programs for Children with Disabilities in Virginia reflect the state and federal requirements for the provision of special education and related services. Section [8VAC20-81-230 D.2](#) of the Virginia regulations mandate that an active SEAC exists, specifies membership that requires that a majority of members be individuals with disabilities or parents of children with disabilities as well as defines specific functions of the SEAC, which are as follows:

1. Advise the local school division of needs in the education of students with disabilities;
2. Participate in the development of priorities and strategies for meeting the identified needs of students with disabilities;
3. Submit periodic reports and recommendations regarding the education of students with disabilities to the division superintendent for transmission to the local school board;
4. Assist the local school division in interpreting plans to the community for meeting the special needs of students with disabilities for educational services;
5. Review the policies and procedures for the provision of special education and related services prior to submission to the local school board; and
6. Participate in the review of the local school division's annual plan.

This report satisfies requirement 3 and 5 above. SEAC has reviewed the draft policy and determined that it does not meet the needs of students with disabilities. SEAC is further concerned that these policy revisions are not in alignment with the [One LCPS: 2027 Strategic Plan for Excellence](#).

Concerns and Recommendations for Draft Policy 8640

Concern 1: Throughout the current policy there is inconsistent reference to defined terms. There is a list of terms defined at the beginning of the policy. When referencing a defined term, it needs to be capitalized and the same wording as the definition. This serves to provide clarity throughout the document for items like the type of data covered, individuals, and requirements. Without consistent use of defined terms, it can lead to ambiguity over the context and applicability of the term and the affect it has on the data itself.

Recommendation 1: Update the document to use the defined terms consistently throughout the policy ensuring capitalization of those defined terms when being referenced.

Concern 2: Currently the definition of Personally Identifiable Information, Directory Information, Access, and Transfer is limited and does not appropriately reflect the breadth of PII being collected by LCPS both under FERPA and privacy regulations such as the VCDPA.

Recommendation 2: Clearly define and align all definitions.

Line 30-31, modify to, “Personally Identifiable Information (PII). Personally Identifiable Information means any information that is linked or reasonably linked to an identified or identifiable natural person. This includes direct and indirect identifiers, such as a student’s name, name of student’s parents or other family members, address of student or student’s family, student social security number, student identification number, student’s biometric record, student’s date of birth, mother’s maiden name or other information which can be used to distinguish or trace an individual’s identity either directly or indirectly through linkages with other information.”

Line 47 modify to “Directory Information (DI). Directory Information means information contained in an Educational Record of a student that would not generally be considered harmful or an invasion of privacy if disclosed.”

Line 115 modify to “Access. Means the ability to inspect, review, view, read, or copy Educational Records.”

Line 120 modify to “Transfer. Means giving access to or surrendering of the Educational Record or a transcript of the record to another entity, person, or third party.”

Concern 3: The draft Policy, while it does state that third parties should comply to the provisions within Policy 8640 (specifically those around the redisclosure of PII), it has no requirement to require the third party to sign documentation confirming this. As an added protection and in line with industry standards, LCPS should be requiring our third

parties to sign contracts and documentation confirming they will comply with Policy 8640 and will not redisclose PII except as allowable by the policy.

Recommendation 3: Update the policy to include the requirement to have third parties and their subcontractors contractually agree to not redisclose.

Line 102 add, “provided they have contractually agreed to not redisclose the PII except as allowed in Policy 8640 and to flow down these requirements to all suppliers.”

Line 324 change to “provided they have contractually agreed to not redisclose the PII except as allowed in Policy 8640 and to flow down these requirements to all suppliers.”

Concern 4: Currently the draft Policy requires the Custodian complete a Record of Disclosure and include the specific legitimate purpose for the disclosure. However, this term is not defined and can lead to confusion over what constitutes a “Specific Legitimate Purpose” and lack of consistency in applying this standard. The Policy should define “Specific Legitimate Purpose” to make it consistent and knowable to enable Custodians to be able to comply.

Recommendation 4: Add the definition for Specific Legitimate Purpose. Specific Legitimate Purpose. The justification for the disclosure of PII. This must be specific to the reason for disclosure and type of PII disclosed. In addition to the specific reason, it must state under which Policy area it is being disclosed. It shall be pursuant to the following:

- a) Legitimate Educational Interest
- b) Disclosure of Records with Consent within this Policy 8640.
- c) Disclosure of Records without Parent or Eligible Student Consent within this Policy 8640.

Concern 5: Currently there are multiple places within the Policy that allow the disclosure of student PII without consent where there are minimal or no requirement for a Legitimate Educational Interest to support the disclosure, meaning the ability to disclose student PII with very minimal restrictions. This could lead to unauthorized disclosures and data loss.

Recommendation 5: Where the disclosure isn’t required by law or federal, state, or local program, or specific exception within Policy 8640, the recommendation is to update the policy to only allow disclosures without consent if there is a Legitimate Educational Interest to disclose.

Line 131 change to: “Records may be released without prior written consent of the Parent or Eligible Student upon request to the School Officials, pursuant to a Legitimate Educational Interest, provided such release does not violate any state or federal law.”

Line 359 add the following requirement, “There is a Legitimate Educational Interest for the disclosure of the DI or purpose outlined within this Policy 8640.”

Concern 6: Currently the Policy is not following Privacy by Design practices and allows for the disclosure of PII without consent and without a reasonable Legitimate Educational Purpose. These initiatives do not require the disclosure of PII to achieve the goal. These items can be accomplished through aggregated or anonymized data. Following Privacy by Design principles, LCPS should only be disclosing PII when it is required. When aggregated or anonymized data can achieve the same result, LCPS should be utilizing said data.

Recommendation 6: LCPS should only disclose PII when it is required.

Lines 208-209 Remove developing predictive tests, and improving instruction for reasons for disclosure of PII.

Lines 216 – 221- Remove the following as an allowable disclosure of PII: “The staff of a college, university, or educational research and development organization or laboratory, at the discretion of the Division Superintendent or designee, if such information is necessary to a research project or study conducted, sponsored, or approved by the entity, provided that no student will be identified by name.”

Concern 7: The proposed additional language on communicating with the community for the release of PII is duplicative and not aligned to the language in Policy 8630 and 3070. It introduces inconsistency and potential additional to disclose unnecessary PI to the community. It is already covered and more appropriately handled in Policy 3070 where it already is included. LCPS can and should be making the community aware of security incidents, and not take that to mean the broad disclosure of student PII. Where PII must be released in the event of an emergency, it is handled about and in Policy 3070. Adding in additional terms leads to potential conflict and ambiguity on the rights and ability of LCPS for affectively communicate with the community.

Recommendation 7: Remove duplicative language that is not aligned to Policy 8630 and Policy 3070.

Lines 276- 282- Remove “In order to foster transparent communication, LCPS staff should endeavor to provide as much relevant information to the community about security incidents occurring in LCPS schools or during LCPS school-sponsored activities. Such communications shall be released in accordance with Policy 3070 and its accompanying regulation and shall be compliant with FERPA and all other applicable laws regarding confidentiality.”

Concern 8: Records of Disclosure requires LCPS to document when PII is disclosed. However, the draft Policy has included an exception whereby the disclosure of Directory

Information does not need to include a Record of Disclosure. The disclosure of Directory Information is done without consent. Meaning if LCPS doesn't create a record, individuals will not be aware that their data is being disclosed. Parents and Eligible Students should have the right to know when their PII is being disclosed and for what purpose, to include Directory Information. LCPS should not allow the secret disclosure of this data without any record. Additionally, without a record of this disclosure, the school would have no way of tracking potential data loss with data breaches of third parties. If a supplier or 3rd party is impacted by data breaches and data loss, without the record of disclosure, LCPS would not be able to identify whether or not they have disclosed LCPS students' data to said provider. This could lead to unknown data loss of Student PII which presents a large risk as outlined in the Summary Statement. LCPS should require a Record of Disclosure for all disclosures of PII to include Directory Information.

Recommendation 8: Require a Record of Disclosure for all disclosures of PII to include Directory Information.

Line 117-118, Remove the following exception: "Release of Directory Information as defined in this policy shall not be entered on the record of disclosure."

Concern 9: Unauthorized disclosures of PII present a large risk to those affected to include, identity theft, crimes against children, and discrimination. When an unauthorized disclosure of PII occurs, affected individuals must be alerted as soon as possible. Currently the regulation does not state any specific timeframe. While the goal should be as soon as possible, without a specific timeframe, there is no accountability to report quickly. A specific timeframe should be added.

Recommendation 9: Add a specific timeframe for informing LCPS parents/guardians of unauthorized disclosures of PII within 90 days of the identification of the unauthorized disclosure.

Line 333- Add "but at least within 90 days of the identification of the unauthorized disclosure."

Concern 10: The draft policy only allows for Parents to opt out of the disclosure of Directory Information, release without consent, within 14 days after written or public notice of Directory Information disclosure. This is very limited, not sufficiently made apparent, and strips parents of the ability to opt out later in the school year or for those who enter LCPS after that notice. Parents should have the ability to opt out of the disclosure of student Directory Information throughout the year. Subject to a period for the opt out preference to be implemented.

Recommendation 10: Allow parents/guardians the ability to opt out of the disclosure of student Directory Information throughout the year. Subject to a period for the opt out preference to be implemented.

Line 357- Add the following, “Thereafter, any Parent of Eligible Student may notify the school in writing that all or any part of the DI of the student shall not be released without prior consent, allowing for a 30-calendar day timeframe to implement this request.”

Concern 11: The section on Disclosure of Directory Information has language that does not make it clear about the selling of Student PII in Directory Information and the obligation to not further redisclose. It should be aligned with Industry Standards and Virginia Data Privacy Laws.

Recommendation 11: Align the policy with Industry Standards and Virginia Data Privacy Laws to not all LCPS to sell Directory Information.

Lines 364-365- Replace with the following, “Any entity requesting DI shall not sell DI. Any entity requesting DI shall not redisclose DI and must comply with Section E of this Policy 8640.”

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Concern 12: SEAC is concerned with the implications of selling student PII.

Recommendation 12: SEAC recommends that the policy clearly reflect that LCPS shall not sell PII. SEAC recommends LCPS choose one of two presented options below.

Option 1: Update Section B 185 and C 283 to reflect LCPS shall not sell PII.

Option 2: Create a new Section Titled, Sale of PII. LCPS shall not sell PII.

SEAC Membership Vote

SEAC Membership Vote on Recommendations

Quorum: 12 out of 17 SEAC members present

Motions:

Melissa Waugh made a motion to update Recommendation 3 to add subcontractors, the motion was seconded by Rozeena Khattak.

Vote to Approve Motion: Unanimous

Melissa Waugh made a motion to add Recommendation 12 that LCPS does not sell PII, the motion was seconded by Shehnaz Khan.

Vote to Approve Motion: Unanimous

Vote Summary on Recommendations:

Melissa Waugh made a motion to approve Recommendations 1 through 12 as a slate, the motion was seconded by Rozeena Khattak.

Vote to Approve Recommendations: Unanimous

SEAC Membership Vote on Policy 8640

SEAC Membership Vote on Recommendations

Quorum: 15 of 17 SEAC members present, quorum established

Motion: Melissa Waugh made a motion to vote on the Policy and Compliance Subcommittee recommendations 1 through 10 as a slate. Motion was seconded by Rozeena Khattak. Vote carried unanimously.

A PTA/PTO representative raised a concern that there were too many considerations for a slate vote.

Melissa Waugh made a motion for reconsideration of the former vote, seconded by Shehnaz Khan; the floor was opened for discussion. Lorraine Hightower commented that all SEAC members had been provided with the subcommittee recommendations in advance of the meeting and felt any concerns would have been raised by the membership. The motion for reconsideration failed. It should be noted that a non-member voted, the unanimous vote reflects the membership vote.

Vote Summary: Passed Unanimously