



POLICY TITLE: Disclosure, Release and Use of Education Records	SYSTEM POLICY AND PROCEDURE MANUAL
POLICY #: 800.66	CATEGORY: Compliance & Ethics
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Prepared by: Office of Corporate Compliance	Notations: Formerly: Family Educational Rights and Privacy Act (FERPA)

GENERAL STATEMENT of PURPOSE

The purpose of this policy is to provide guidance to Northwell Health programs and/or entities providing services under contract to an Education Program or through the New York Early Intervention System (“Northwell Education Programs”). This policy will establish general requirements for the Disclosure, release and use of Education Records in accordance with the Federal Family Educational Rights and Privacy Act of 1974 (“FERPA”) and New York State Education Law 2-d. These laws protect the privacy of students’ Education Records.

POLICY

It is the policy of Northwell Education Programs to comply in all respects with the requirements of Federal and State laws and regulations governing the confidentiality and rights of Eligible Students and Parents with respect to students’ Education Records.

SCOPE

This policy applies to all Northwell Health employees, as well as medical staff, volunteers, students, trainees, physician office staff, contractors, trustees and other persons performing work for or at Northwell Education Programs.

DEFINITIONS

Directory Information: means information contained in an Education Record of a student that would not generally be considered harmful or an invasion of privacy if disclosed. This information includes, but is not limited to, the student’s name; address; phone number; email address; photograph; date and place of birth; major field of study; grade level; enrollment status (e.g., undergraduate or graduate, full-time or part-time); dates of attendance; participation in officially

recognized activities and sports; weight and height; degrees, honors, and awards received; and the most recent educational agency or institution attended.

Disclosure: for purposes of this policy only, means 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 that provided or created the Education Record.

Education Program: means any program that is principally engaged in the provision of education, including, but not limited to, early childhood education, elementary and secondary education, postsecondary education, specialty education, job training, career and technical education, and adult education, and any program that is administered by an educational agency or institution.

Education Records: means those records that are:

- I. Directly related to a student; and
- II. Maintained by a Northwell Education Program or by a party acting on its behalf.

The term Education Records does not include:

1. Education Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record.
2. Education Records created by a Northwell Education Program's security personnel.
3. Education Records relating to an individual who is employed by a Northwell Education Program, that:
 - (a) Are made and maintained in the normal course of business;
 - (b) Relate exclusively to the individual in that individual's capacity as an employee; and
 - (c) Are not available for use for any other purpose.
4. Eligible Student Education Records, that are treatment records:
 - (a) Made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in their professional capacity or assisting in a paraprofessional capacity;
 - (b) Made, maintained, or used only in connection with treatment of the Eligible Student; and
 - (c) Disclosed only to individuals providing the treatment. "Treatment" does not include remedial educational activities or activities that are part of the Northwell Education Program; and
5. Records created or received by a Northwell Education program after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student.
6. Grades on peer-graded papers before they are collected and recorded by a teacher.

Eligible Student: means a student who has reached 18 years of age or is attending an institution of post-secondary education.

Institution of postsecondary education means an institution that provides education to students beyond the secondary school level; “secondary school level” means the educational level (not beyond grade 12) at which secondary education is provided as determined under State law.

Parent: means a parent of a student and includes a natural parent, a guardian, or an individual acting as a parent in the absence of a parent or a guardian. When a student becomes an Eligible Student, the rights accorded to, and consent required of, Parents under this definition transfer from the Parents to the Eligible Student.

Personally Identifiable Information: Any information about an individual maintained by an agency, including (i) any information that can be used to distinguish or trace an individual's identity, such as name, Social Security Number, date and place of birth, mother's maiden name, or biometric records; and (ii) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

The following list contains examples of information that may be considered PII:

1. Name, such as full name, maiden name, mother's maiden name, or alias;
2. Personal identification number, such as Social Security number (SSN), passport number, driver's license number, taxpayer identification number, patient identification number, and financial account or credit card number;
3. Address information, such as street address or email address;
4. Asset information, such as Internet Protocol (IP) or Media Access Control (MAC) address or other host-specific persistent static identifier that consistently links to a particular person or small, well-defined group of people;
5. Telephone numbers, including mobile, business, and personal numbers;
6. Personal characteristics, including photographic image (especially of face or other distinguishing characteristic), x-rays, fingerprints, or other biometric image or template data (e.g., retina scan, voice signature, facial geometry);
7. Information identifying personally owned property, such as vehicle registration number or title number and related information;
8. Salary and bonus information;
9. Work eligibility;
10. Citizenship;
11. Criminal records;
12. Date of death or death certificate number;
13. Dependent information;
14. Disability information;
15. Other information about an individual that is linked or linkable to one of the above (e.g., date of birth, place of birth, race, religion, weight, activities, geographical indicators, employment information, medical information, education information, financial information).

All PII shall at all times be subject all applicable laws, including, without limitation, the New York State Social Security Number Protection Law, New York State Labor Law, and Fair Credit Reporting Act. This includes all PII relating to members of the Northwell workforce. All PII that

is also Protected Health Information shall, at all times, also be subject to all applicable laws and Northwell policies regarding Protected Health Information.

Record: means any information recorded in any way, including, but not limited to, handwriting, print, computer media, video or audio tape, film, microfilm and microfiche.

PROCEDURE

I. Disclosure of Educational Records

a. Consent Required

1. Federal and NYS law establishes a general rule that Education Records may not be Disclosed without the written consent of the Eligible Student or Parent.

b. Procedure for Written Consent for Disclosure

1. The Parent or Eligible Student shall provide a signed and dated written consent before the Northwell Education Program discloses Personally Identifiable Information from the Eligible Student's Education Records, unless disclosure is permitted without consent (see Section d below). The written consent must:
 - i. Specify the Education Records that may be Disclosed;
 - ii. State the purpose of the Disclosure; and
 - iii. Identify the party or class of parties to whom the Disclosure may be made.
2. When a Disclosure is made:
 - i. If a Parent or Eligible Student so requests, the Northwell Education Program shall provide them with a copy of the Education Records Disclosed; and
 - ii. If the Parent of a student who is not an Eligible Student so requests, the Northwell Program shall provide the student with a copy of the Education Records Disclosed.

c. Exception for Directory Information

1. Northwell Education Programs may release Directory Information without written consent by the Eligible Student or Parent.
2. Northwell Education Program must honor any valid requests to opt out of the Disclosure of Directory Information.

d. Disclosures of Education Records without Consent

1. Northwell Education Programs may disclose Personally Identifiable Information from student's Education Records without an Eligible Student or Parent's written consent under certain conditions, which include:
 - i. Disclosure to another Northwell Health employee whom the Northwell Education Program determines to have a legitimate educational interest.
 - ii. Disclosure to a contractor, consultant, volunteer, or other party subject to a written agreement to whom a Northwell Education Program has outsourced institutional services or

functions may be considered a school official provided that the outside party:

- (a) Performs an institutional service or function for which the Northwell Education Program would otherwise use employees;
 - (b) Is under the direct control of the Northwell Education Program with respect to the use and maintenance of Education Records; and
 - (c) Is subject to the condition that the party to whom the information is Disclosed will not re-disclose the information to any other party without the prior consent of the Parent or Eligible Student.
- iii. Disclosure to an education auditing or enforcing agency of a Federal or State supported program.
 - iv. Disclosure associated with eligibility for financial aid, enrollment, or transfer of the Eligible Student.
 - v. Disclosure pursuant to a court order or subpoena.
 - vi. Disclosure that is necessary to protect the health or safety of the student or other persons.
 - vii. Disclosure to the Eligible Student.

II. Right of Access

- a. Northwell Education Programs shall comply with a Parent or Eligible Student's request for access to Education Records within a reasonable period of time, but not more than 45 days after it has received the request. If circumstances effectively prevent the Parent or Eligible Student from exercising the right to inspect and review the requested Education Records, Northwell Education Programs shall provide the Parent or Eligible Student with a copy of the records requested; or make other arrangements for the Parent or Eligible Student to inspect and review the requested records.
- b. If a Parent or Eligible Student is unable to submit a request to review or inspect Education Records in writing, a verbal request shall be accepted.
- c. Northwell Education Programs shall respond to reasonable requests for explanations and interpretations of Education Records.
- d. Northwell Programs shall not destroy any Education Records if there is an outstanding request to inspect and review the records.
- e. Unless the imposition of a fee effectively prevents a Parent or Eligible Student from exercising the right to inspect and review the Education Records, Northwell Education Programs may charge a fee for a copy of an Education Record which is made for the Parent or Eligible Student. Northwell Education Programs may not charge a fee to search for or to retrieve the Education Records of an Eligible Student.

III. Right to Request an Amendment

- a. If an Eligible Student or Parent believes the Education Records relating to the student contain information that is inaccurate, misleading, or in violation of the student's rights of privacy, they may ask the Northwell Education Program to amend the Education Records.

- b. Northwell Programs shall decide whether to amend the record as requested within a reasonable time after receiving the request.
- c. If Northwell Education Programs decide not to amend the record as requested, it shall inform the Parent or Eligible Student of its decision and of their right to a hearing.

IV. Right to Request a Hearing

- a. A Parent or Eligible Student has a right to request a hearing in order to challenge the content of the student's Education Records.
- b. Requests for a hearing should be submitted to the appropriate designee.
- c. If an Eligible Student or Parent requests a hearing by a Northwell Education Program, the hearing must meet the following requirements:
 - 1. The hearing shall be held within a reasonable time after receipt of the request for the hearing from the Parent or Eligible Student.
 - 2. The Parent or Eligible Student shall be given notice of the date, time, and place, reasonably in advance of the hearing.
 - 3. The hearing may be conducted by any individual, including an official of the applicable Northwell Education Program, who does not have a direct interest in the outcome of the hearing.
 - 4. The Parent or Eligible Student shall be given a full and fair opportunity to present evidence relevant to the issues raised. The Parent or Eligible Student may, at their own expense, be assisted or represented by one or more individuals of his or her own choice, including an attorney.
 - 5. The Northwell Education Program shall make its decision whether or not to amend the Education Records 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.

V. Right to Submit a Complaint

- a. A Parent or Eligible Student may file a written complaint with the Student Privacy Policy Office, formally the Family Policy Compliance Office, regarding an alleged violation under the Act and this part. The address is: Student Privacy Policy Office, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202.
- b. Complaints of alleged violations of Early Intervention Program regulations should be submitted to: Director, Early Intervention Program, New York State Department of Health Room 287 Corning Tower Building, Albany, New York 12237-0618.

VI. Annual Notification

- a. Northwell Education Programs shall annually notify Eligible Students currently in attendance (or Parents thereof) of their rights under this policy.
- b. The notice must inform Parents or Eligible Students that they have the right to:
 - 1. Inspect and review the student's Education Records;
 - 2. Seek amendment of the student's Education Records that the Parent or Eligible Student believes to be inaccurate, misleading, or otherwise in violation of the student's privacy rights;

3. Consent to Disclosures of Personally Identifiable Information contained in the student's Education Records, except to the extent Disclosure is permitted without consent; and
 4. File with the U.S. Department of Education a complaint concerning alleged failures by a Northwell Education program to comply with the requirements of FERPA, its implementing regulations, and this policy.
- c. The notice must include:
1. The procedure for exercising the right to inspect and review Education Records.
 2. The procedure for requesting amendments of Education Records.
 3. The criteria for determining what constitutes a legitimate educational interest, with respect to the Disclosure of Education Records to another Northwell employee.
- d. Northwell Education Programs may provide this notice by any means that are reasonably likely to inform the Parents or Eligible Students of their rights.
- e. Northwell shall effectively notify Parents or Eligible Students who are disabled and/or Parents who have a primary or home language other than English.

VII. Parents' Bill of Rights

- a. Northwell Education Programs must sign the Parents' Bill of Rights before commencing services governed by this policy. The Parents' Bill of Rights includes:
1. The Parents' right to inspect and review their Education Records, subject to certain limitations;
 2. The Parents' right to consent to Disclosures of Personally Identifiable Information contained in students' Education Records, except to the extent that Disclosure is permitted without consent;
 3. The right to request the amendment of Education Records; and
 4. The right to file a complaint with the U.S. Department of Education concerning alleged failures by Northwell Education Programs to comply with the requirements of FERPA and this policy.

VIII. Access Controls

- a. Northwell Education Programs must use reasonable methods of physical and/or technological access controls to ensure that those with access to Education Records have legitimate educational interests.
- b. Storage of physical Education Records must be secure. All Education Records containing PII must be maintained in secure locations, such as a file or room that can be locked when unattended. Education Records must be disposed of using an appropriate means such as shredding.
- c. Storage of electronic Education Records must be secure. Internal controls must be in place when information is stored on computers that limit access to authorized staff within an agency or to the individual provider. This includes, but is not limited to, password protection, firewall software, encryption and secure storage of discs, CD's, DVD's and/or other removable storage devices.

IX. Interaction of FERPA and HIPAA

- a. There may be overlap in some instances between FERPA and the Health Insurance Portability and Accountability Act ("HIPAA") Privacy Rule and

Security Rule. If it is unclear whether records are governed by FERPA or HIPAA or both, individuals should contact the Office of Corporate Compliance for assistance.

X. Recordkeeping Requirements

- a. Northwell Education Programs must maintain a record of each request for access to, and each Disclosure of, Personally Identifiable Information from the Education Records of each student, as well as the names of state and local educational authorities and federal officials and agencies that may make further Disclosures of Personally Identifiable Information from the student's Education Records without consent under the implementing regulations.
- b. Northwell Education Programs shall maintain the record of requests for access and Disclosures with the Education Records of the student as long as the Education Records are maintained.
- c. For each request or Disclosure, the record must include: (i) the parties who have requested or received PII from the Education Records; and (ii) the legitimate interests the parties had in requesting of obtaining the information.

REPORTING AND ENFORCEMENT

All violations of this policy or questions regarding the access, use, disclosure of PII shall be reported to the appropriate manager/supervisor/director or to the Office of Corporate Compliance (516-465-8097) for appropriate resolution of the matter. The HelpLine is available 24 hours a day, seven days a week at (800) 894-3226 or online at www.northwell.ethicspoint.com, is accessible and allows for questions regarding compliance issues to be asked and for compliance issues to be reported. Reports of potential fraud, waste and abuse and compliance issues also may be made directly to the Chief Corporate Compliance Officer or designee in person, in writing, via email, mobile device via a QR code, or by telephone.



All reports received by the Office of Corporate Compliance are investigated and resolved to the fullest extent possible. The confidentiality of persons reporting compliance issues shall be maintained unless the matter is subject to a disciplinary proceeding, referred to, or under investigation by Medicaid Fraud Control Unit, Office of Medicaid Inspector General or law enforcement, or disclosure is required during a legal proceeding, and such persons shall be protected under the required Northwell Education Program's policy for non-intimidation and non-retaliation.

Violations of this policy will be subject to disciplinary action as outlined in the Human Resources Policy and Procedure Manual and in the Bylaws, Rules and Regulations of the Medical Staff and/or an entity/individual's contract with Northwell Health.

The New York State Department of Health and the Secretary of the Department of Education may take any legally available enforcement action in accordance with FERPA and/or New York State law. In addition, noncompliance by any individuals to whom this policy applies may be subject to disciplinary action by Northwell, up to and including termination of employment.

REFERENCES to REGULATIONS and/or OTHER RELATED POLICIES

- The FERPA regulations and other helpful information can be found at: <http://www.ed.gov/policy/gen/guid/fpco/index.html>.
- Guidance on the intersection of HIPAA and FERPA: *The Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records*, can be found at: <https://www2.ed.gov/policy/gen/guid/fpco/doc/ferpa-hipaa-guidance.pdf>
- 20 U.S.C. §1232g
- 34 CFR Part 99
- 20 U.S.C. §1417(c)
- 34 CFR §§300.610 - 300.626
- 34 CFR §§303.400 – 303.416
- Individuals with Disabilities Education Act (IDEA) and regulations (34 CFR 303; 34 CFR 300.560 through 300 576)

CLINICAL REFERENCES/PROFESSIONAL SOCIETY GUIDELINES

N/A

ATTACHMENTS

- Addendum for Early Intervention Programs
- Parental Consent to Use E-mail to Exchange Personally Identifiable Information **FORMS**

FORMS

N/A

<u>APPROVAL:</u>	
Northwell Health Policy Committee	06/18/2024
System PICG/Clinical Operations Committee	07/17/2024

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Approvals: * =Northwell Health Policy Committee; ** = PICG/Clinical Operations Committee; ☒ = Provisional; ❖ = Expedited

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Addendum for Early Intervention Programs

A child's early intervention record is considered an Education Record; not a medical record and is governed by this policy. In addition to those requirements set forth in this policy, Early Intervention Programs must also comply with the requirements in this Addendum. All capitalized terms used in this Addendum shall have the same meaning as in the policy, unless expressly defined in this Addendum. To the extent there are any inconsistencies or ambiguities between this Addendum and the policy, the terms of this Addendum shall control, **only** for early intervention programs.

Definitions:

Early Intervention Official (EIO): An individual designated by the chief elected official of the municipality/county that administers the Early Intervention Program locally who is responsible for making sure that eligible children have an Individualized Family Service Plan (IFSP) meeting and for making sure the IFSP is reviewed every six months or more frequently if a review is requested. Please follow the link: [Municipal/County Contacts for the Early Intervention Program](#) to find a the EIOs by county.

Early Intervention Program (EIP): A program administered by the New York State Department of Health through the Bureau of Early Intervention and part of the national Early Intervention Program for infants and toddlers with disabilities and their families. To be eligible for EIP services, children must be under 3 years of age and have a confirmed disability or established developmental delay in one or more of the following areas of development: physical, cognitive, communication, social-emotional, and/or adaptive.

Early Intervention Services (EIS): The EIP offers a variety of therapeutic and support services to eligible infants and toddlers with disabilities and their families, including:

- assistive technology devices and services
- audiology
- family education and counseling, home visits, and parent support groups
- nursing services
- nutrition services
- occupational therapy
- physical therapy
- psychological services
- service coordination
- social work services
- special instruction
- speech pathology
- vision services

Rendering Provider: A professional who is licensed, certified or registered in their discipline and approved by the NYS Department of Health to provide EIS.

EIP Records - Right of Access

- Parents have a right to receive a copy of all materials contained in their child's EIP record from the Rendering Provider.
- Parents have a right to receive a copy of all materials contained in their child's EIP record from the Rendering Provider
- If a Parent requests EIP records be sent via email, all emails must be encrypted unless the Parent specifically requests otherwise by signing the attached Parental Consent to Use E-mail to Exchange Personally Identifiable Information. (See generally, Northwell Policy #900.11 – Electronic Communications)
- Parents have a right to receive an explanation and interpretation of all material included in the child's records from the Rendering Provider.
- Parents are oriented to their right and the process to inspect all of their child's records and given a written orientation as outlined in the Parent Handbook given at the time of entry into program. This includes the EI Program Director's name and telephone number as contact to initiate the process. Parents will be oriented to the Northwell EIP specific process they must follow to inspect and review all records pertaining to their child. This may include an appointment and location to privately review records.
- Parents have a right to receive a copy of their child's record from the rendering provider within 10 working days of the request. If the request is made as part of mediation or an impartial hearing, a copy must be provided within 5 days.
- All of the above rights extend to the commissioner of social services for children in the care and custody or custody and guardianship of the local social services districts.

EIP Records – Right to Request an Amendment

- Parents have the right to request an amendment to their child's record when the parent believes the information contained in the record is inaccurate, misleading or violates the privacy or any other rights of their child. If a clinician decides not to amend the record as requested by the parent, the EIO will be contacted by the provider. The EIO will then be responsible to inform the parent in writing and informed that they have a right to a hearing through the Education Program.
- If information is found to be inaccurate in the record by the Education Program, the record will be amended, and the child's service coordinator will be informed. The service coordinator will notify the parent in writing of the amendment.
- A fee for copying is not to exceed \$0.10 per page for the first copy and \$.25 per page for additional pages. No fees for records related to evaluation or for search and retrieval of records may be requested.
- An Early Intervention Official, , designated by the chief elected official of the municipality/county administers the Early Intervention Program locally, must be notified by the rendering provider if the provider declines a parental request to have their child's record amended.

- The Rendering Provider must inform the family's service coordinator whenever they amend information in a child's record based on Parent request. The service coordinator is required to ensure the contents of the record are amended as requested and notify the parent of the amendment in writing or provide a verbal explanation in their dominant language unless not feasible to do so.

EIP Records – Access Controls

- Only individuals who collect or use information for the express purposes of facilitating the child/family's participation in the EIP are authorized to routinely access a child's record. Except for purposes of providing treatment to child, staff and business associates should access minimum information necessary to perform their job as defined in their job description or Business Associate Agreement.

EIP Records – Release of HIV-Related Information

- HIV- related information can only be disclosed if the Parent signs the New York State form for Release of Medical Information and Confidential HIV Related Information (DOH 2557). All written Disclosures of confidential HIV – information must be accompanied by a statement prohibiting re-disclosure. An example of a redisclosure statement is the following:

“This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of the information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the release of medical or other information is NOT sufficient for further disclosure.”

Parental Consent to Use E-mail to Exchange Personally Identifiable Information

Parent's Name: _____

E-mail Address: _____

Child's Name: _____ D.O.B. _____

At your request, you have chosen to communicate personally identifiable information concerning your child's early intervention treatment by e-mail without the use of encryption. Sending personally identifiable information by e-mail has a number of risks that you should be aware of prior to giving your permission. These risks include, but are not limited to, the following:

- E-mail can be forwarded and stored in electronic and paper format easily without prior knowledge of the parent.
- E-mail senders can misaddress an e-mail and personally identifiable information can be sent to incorrect recipients by mistake.
- E-mail sent over the Internet without encryption is not secure and can be intercepted by unknown third parties.
- E-mail content can be changed without the knowledge of the sender or receiver.
- Backup copies of e-mail may still exist even after the sender and receiver have deleted the messages.
- Employers and online service providers have a right to check e-mail sent through their systems.
- E-mail can contain harmful viruses and other programs.

Parental Acknowledgement and Agreement

I acknowledge that I have read and understand the items above which describe the inherent risks of using e-mail to communicate personally identifiable information. Nevertheless, I, _____, authorize _____ whose e-mail address is _____ to communicate with me at my e-mail address, _____, concerning my child's, _____, participation in the Early Intervention Program (EIP), including but not limited to communication regarding service delivery, his/her progress in the EIP and any other related matters. I understand that use of e-mail without encryption presents the risks noted above and may result in an unintended disclosure of such information.

(Optional) In addition, I give permission for members of my child's treatment team to communicate personally identifiable information concerning my child with each other using unencrypted e-mail. Early intervention team members who I give permission to use unencrypted e-mail to communicate with each other about my child include:

- (1) _____ with the e-mail address _____
- (2) _____ with the e-mail address _____
- (3) _____ with the e-mail address _____
- (4) _____ with the e-mail address _____
- (5) _____ with the e-mail address _____

Parent's Signature _____ Date _____