

## Chapter 3 Operations Management

### 3.1 A Student Records

#### Introduction

The Atlantic Provinces Special Education Authority (APSEA) acknowledges its responsibility for the integrity of all student records within its custody and control.

APSEA recognizes that effective student records management is of considerable importance to students, parents/guardians, teachers, professional staff, and administrators. Although APSEA is governed by the APSEA Act and is not necessarily subject to provincial legislation, we strive to align services with our provincial partners. In the development of and accountability for the APSEA Student Records Policy, APSEA reviews and considers relevant legislation. This includes, but may not be limited to, the Education Act and regulations, the Freedom of Information and Protection of Privacy (FOIPOP) Act, the Youth Criminal Justice Act (YCJA), and privacy legislation in each of the Atlantic Provinces where APSEA provides services. This Policy also draws upon the Student Records Policy developed in 2006 by the Nova Scotia Department of Education.

#### Policy Statement

This policy provides direction to APSEA staff regarding their roles and responsibilities for: the completion, access, correction or removal of personal information, security, maintenance, storage, transfer, retention, and destruction of student records.

#### Definitions

*Confidential Record* – Documentation, including medical information related to the student’s educational programming that is considered to be highly sensitive in nature, as determined under this policy or by the Superintendent of APSEA or his/her designate. This includes, but is not limited to, parental consent forms and third party reports such as medical, audiology and eye reports from health care providers.

*Cumulative Record* - Documentation related to a student’s educational progress that is not placed in the student confidential record (e.g., APSEA Service Plan (ASP), functional vision report).

*Individual Case Notes* - Notes made by professionals in the course of counseling sessions and assessments (e.g., psychologists’ working notes or counsellors’ notes).

*Legal Guardian* - An individual who has legal authority to care for another person. Legal guardianship is commonly used for minors, developmentally disabled adults and incapacitated seniors.

*Medical Consent Form* - The form used for parents/guardians to give authority to APSEA staff to arrange for the provision of health care services for their child/ward.

*Medical/Health Records* - The record of a student's medical information, care and treatment. This may include, but is not limited to, a chronological written account of a student's nursing/physician examination, care and treatment including any prescribed medication.

*Media Files* – Any electronic images, audio or video files.

*Parent* - The parent, guardian, or other person who is legally responsible for the care and custody of a student.

*Personal Information* - recorded information about an individual, which may include:

- (i) the individual's name, address or telephone number,
- (ii) the individual's race, national or ethnic origin, colour, or religious or political beliefs or associations,
- (iii) the individual's age, sex, sexual orientation, gender identity, marital status or family status,
- (iv) an identifying number, symbol or other particular assigned to the individual,
- (v) the individual's fingerprints, blood type or inheritable characteristics,
- (vi) information about the individual's health-care history, including a physical or mental disability,
- (vii) information about the individual's educational, financial, criminal or employment history,
- (viii) anyone else's opinion about the individual, and
- (ix) the individual's personal views or opinions, except if they are about someone else.

Personal information must not be collected unless it relates directly to and is necessary for an operating program or activity.

*Student* - An individual who is receiving, or has received, APSEA services.

*Student Record* - The student's APSEA cumulative and confidential records, and where applicable, the Youth Criminal Justice Record; a student record may exist in paper and/or electronic and/or digital format.

*Student Records Management* - The procedures related to the creation, collection, distribution and use (including access and transfer), updating, protection, organization, storage, maintenance and retention, and closure of the student's records.

*Superintendent* - The Superintendent of APSEA.

*Youth Criminal Justice Record* - All recorded information pertaining to the federal *Youth Criminal Justice Act (YCJA)* and services or programs from the criminal justice system in which a student is identified.

## **Policy Objectives**

- (i) To ensure all student records management is conducted in a consistent, efficient, effective, accurate and accountable manner.
- (ii) To facilitate appropriate sharing of vital information.
- (iii) To ensure compliance with appropriate legislation.

## Application

This policy applies to all APSEA employees who have responsibility for student records.

All teachers, professional and administrative staff are required to keep accurate, well-maintained, and up-to-date information for all students.

## Policy Directives

### (i) Records

#### APSEA Cumulative Record

An APSEA cumulative record must be established in a timely manner following acceptance for service under the direction of the appropriate Director. Access to this information is restricted (refer to Appendix B).

#### Content of APSEA Cumulative Record

The APSEA cumulative record must contain the following personal information, if applicable:

- APSEA Referral for Services form
- pertinent medical information that directly affects the educational programming, health, and safety of the individual or others, such as clinical acuity, eye condition, field loss and functional acuity and/or degree and nature (sensorineural or conductive or mixed) of hearing loss
- Initial Visit Report
- APSEA Service Plan (ASP)
- ASP January and June Reports
- APSEA Short-Term Program Reports
- indication of any other files held by APSEA relating to the student
- custody documents
- legal documents pertaining to legal name change
- Discontinuation of APSEA Services form

The APSEA cumulative record may also contain the following:

- student individualized educational plans, e.g., IEP, IPP, SEP
- library and equipment loan records
- APSEA Assistive Technology SET3 report
- parental consent/authorization forms pertaining to APSEA programs and services not deemed to be sensitive or not required to be included in the confidential file
- photograph of the child

Note: A student's public school cumulative record, containing educational progress reports resides at the student's school.

### **APSEA Confidential Record**

An APSEA confidential record must be created immediately when highly sensitive information is produced or acquired. This record is created under the direction of the Superintendent of APSEA or his/her designate. A student's confidential record contains sensitive reports and documents, either generated within APSEA or received from third parties. Access to this information is restricted (refer to Appendix B). The existence of the confidential record must be noted on the cumulative record.

### Content of APSEA Confidential Record

The APSEA Confidential Record must contain the following personal information, if applicable:

- APSEA assessment reports, including, but not limited to, psycho-educational, speech-language, occupational therapy, physiotherapy, developmental evaluations
- APSEA field-based assessment reports
- Parent consent/authorization for centre-based assessment.
- Nursing records generated by APSEA
- Third party information requested by APSEA from an agency or professional (who is a recognized service provider and not employed by APSEA), such as assessments, referrals, correspondence or reports from occupational therapists, psychologists, physicians, social workers
- APSEA Incident Report forms and any related notices, e.g., letter to school or parent.

### **(ii) Changes or Corrections to the Student Record**

A student record may be changed or corrected as set down in this Policy.

All requests for change or correction to the student record must be made in writing to the Superintendent and retained in the student's file.

If a student (current or former), parent, APSEA teacher, or school professional staff requests a change or correction to the student record, the following procedure will apply:

- If the Superintendent of APSEA or his/her designate decides the student record or part of the student record is inaccurate, the change is made and documented in the student record.
- If the Superintendent of APSEA or his/her designate decides the student record or part of the student record is accurate, no change is made.
- If the Superintendent of APSEA or his/her designate decides the student record or part of the student record was accurately recorded, but there is a subsequent variation in circumstances to render the student record or part of the student record inaccurate from that time on, the student record or part of the student record is changed at the time of identifying the inaccuracy and documentation of the request for a change is kept.

Name changes must be accompanied by legal documentation. A photocopy of the legal documentation must be placed in the cumulative record.

Where a third party requests information from the student record in relation to changes or corrections, the Superintendent shall, subject to the YCJA or any other applicable laws, only provide such information from the record to which the student has provided written consent.

### **(iii) Access to Student Records**

The Superintendent of APSEA or his/her designate is responsible for ensuring access to student records is carried out in accordance with this policy as well as appropriate legislation.

Note: For clarification concerning access to student records and the related process, refer to Appendix A in this document.

- a) Access considered on a “need to know” basis is determined by:
  - relevancy for delivery of services.
  - safety and security of students, staff and members of the school community.
  
- b) Access requested via a production order requires the following:
  - The APSEA staff member obtain advice from the appropriate senior APSEA staff (Superintendent or designate), who should seek advice from APSEA legal counsel.
  - Upon receipt of a production order, subject to the advice from appropriate senior staff and APSEA legal counsel, a copy of all APSEA-generated documents from the original student record will be provided through the appropriate process. Upon return of the original file, the copy of the student record is shredded in a secure manner.
  - With the exception of a production order, access to records does not include third party information.
  
- c) APSEA must ensure the original student records remain in the APSEA record keeping system, except when the record has been requested through a production order or is required for some other legally permissible purpose. When APSEA provides viewing access, the viewing must occur on APSEA premises.

### **(iv) Transfer of Records**

It is the responsibility of the Superintendent of APSEA or his/her designate to ensure the secure and confidential transfer of the student record. A request for student records from outside of APSEA must be approved by the Superintendent of APSEA or his/her designate. Any transfer will be in accordance with the following:

- Transfer of student records must be carried out in a secure manner from the APSEA Centre.
- The manner of transfer can include: secure electronic mail or secure public or private mail service.

- When a transfer of records has been approved, a copy of the records shall be provided. The original records shall be retained at APSEA.
- Transfer of records does not include “third party information”.
- Transfers must be documented, including where, to whom and which parts of the student record have been sent.
- Transfers require a legible and original copy of the parent/legal guardian signature.
- Transfers shall be completed in a time-sensitive manner.

**(v) Maintenance and Retention of Student Records**

Student records and any copies must be maintained with a high degree of security to avoid unauthorized access, use, alteration, disclosure or disposal.

- Student records must be kept in locked storage/briefcase, secure rooms and/or on a secure database designated for file storage.
- Student records of students who no longer receive APSEA services will be maintained with the same level of security as the student records of students currently served by APSEA.
- Student records kept in electronic format must be secured through the use of confidential passwords and encryption.
- Media files created by APSEA must be either shredded or securely erased when no longer used for programming, assessment or for sharing information/communication.
- Media files received from a third party are the responsibility of the recipient and must be returned or destroyed with the consent of the originator.

**(vi) Responsibility for Security and Maintenance**

The Superintendent of APSEA or his/her designate has the responsibility for all student records management, including:

- making every reasonable effort to ensure the information is accurate and up-to-date.
- ensuring each student has a cumulative record and, when necessary, a confidential record.
- providing storage and ensuring security of the student records.

The Superintendent of APSEA or his/her designate may assign tasks for student records management to APSEA staff, but retains responsibility. All staff should have access to, and familiarity with, all provisions of this policy.

**(vii) Retention of Records**

APSEA must ensure student records are protected, including long-term storage in accordance with the Records Retention Schedule (Appendix C).

### **Accountability, Monitoring and Review**

- The Superintendent of APSEA is accountable to the APSEA Board of Directors for compliance with this policy.
- The Superintendent of APSEA or his/her designate will review this policy annually.

### **Communication/Enquiries**

For information about this policy, please contact the Superintendent (902/424-8500, apsea@apsea.ca).

### **Approval Dates**

This policy replaces Policy 105 Management of APSEA Files and Records, and Procedure SI.03 APSEA Student Files Procedure.

Approved: 24 March 2016

Revised:

## APPENDIX A

### PROCEDURE FOR OBTAINING ACCESS TO STUDENT RECORDS

A person may obtain access to a record by:

- (a) making a request in writing to the Superintendent;
- (b) specifying the subject matter of the record requested with sufficient detail so that someone familiar with the subject matter can find the information; and
- (c) paying for any applicable fees, if required.

Requested information will be provided within 24 hours where feasible.

## APPENDIX B

### CUMULATIVE RECORD

<b>Access by Whom</b>	<b>Process</b>
Student under 19 years	Consent of parent required.
Student over 19 years	No consent required.
Parent of students under 19 years	No consent required if in care of that parent.
Parent of students over 19 years	Consent of student required.
Legal Guardian of students over 19 years	No consent required
APSEA teacher assigned to work with the student	Where necessary for his or her work.
Other APSEA staff	Where necessary for his or her work.
Third party (student's legal counsel)	Consent of parent if child is under 19 years and in care of that parent. Consent of the student if student is over 19 years.
Law enforcement agencies	Requested via a production order.
All other third parties	If the student is under 19 years, with written consent of parent. If student is over 19 years, or not in care of the parent, written consent of student; subpoena, FOIPOP process or advice of APSEA legal counsel.



## **CONFIDENTIAL RECORD**

<b>Access by Whom</b>	<b>Process</b>
Student under 19 years	Consent of parent required, request as per Appendix A.
Student over 19 years	No consent required, request as per Appendix A.
Parent of students under 19 years	Written request.
Parent of students over 19 years	Written request with consent of student.
Legal Guardian of students over 19 years	Written request.
APSEA teacher assigned to work with the student	The Superintendent or designate considers “need to know” and provides access as appropriate.
Other APSEA staff	The Superintendent or designate considers “need to know” and provides access as appropriate.
Third party (student’s legal counsel)	Written request with consent of both student and parent if child is under 19 years, and in the care of the parent. Written request with consent of the student if the student is over 19 years, or not in care of the parent.
Law enforcement agencies	Requested via a production order.
All other third parties	Subpoena; written request unless a copy of the record has been provided to the parent or student previously and parent or student who had previously received the record has consented in writing, or advice of legal counsel.

## **APPENDIX C**

### **RECORDS RETENTION SCHEDULE**

APSEA must ensure student records are protected, including long-term storage.

<b>Original Documents</b>	<b>Minimum Retention Period</b>
Cumulative File/Record	In accordance with policies of related school boards.
Confidential File/Record (includes medical record)	APSEA-generated information – 6 years after student’s 21 <sup>st</sup> birthday.* Third party generated information – 6 years after student’s 21 <sup>st</sup> birthday.
Assessment/Field-Based (Assessment Protocols)	6 years after student’s 21 <sup>st</sup> birthday.*

\*As student records are typically kept at its Centre in NS, APSEA will maintain student records for a minimum of six (6) years after the student’s 21<sup>st</sup> birthday. If any school board or Department of Education wants to preserve any student record(s) kept by APSEA, and pertains to a student from their province beyond that six (6) year period, a written request must be submitted to APSEA before the expiry of that six (6) year period.