

Esperanza Cyber Charter School

Policy No.:

Section:

Title:

Date Adopted:

Date Last Revised:

OPERATIONS

RIGHT-TO-KNOW LAW POLICY

7/23/2012

RIGHT-TO-KNOW RECORDS POLICY

Purpose:

The purpose of this policy is to establish procedures to ensure Esperanza Cyber Charter School complies with the requirements of the Right-to-Know Law, 65 P.S. § 67.101 *et seq.*, which allows legal residents of the United States to inspect and obtain copies of public records.

The Board of Trustees of Esperanza Cyber Charter School directs the appointed Open Records Officer to implement procedures necessary to effectuate this Policy and to adhere to the requirements of the new Right-to-Know Law. This policy supersedes and replaces all previously adopted Right-to-Know Law Policies at Esperanza Cyber Charter School and any and all procedures related to the Right-to-Know Law at Esperanza Cyber Charter School shall be modified as consistent with this Policy.

Language in this Policy has been drafted taking into consideration the Right-to-Know Law and information available from and through the Office of Open Records and Pennsylvania Department of Education. Nothing in this policy shall be construed to conflict with applicable state and/or federal laws, including but not limited to the Right-to-Know Law and any and all applicable common law and cases developing from the Right-to-Know Law and/or interpreting the Right-to-Know Law. In the event the Right-to-Know Law is amended or otherwise revised, this Policy shall be interpreted to incorporate any revisions or changes to the Right-to-Know Law without the need for Board action.

Definitions:

For purposes of this policy, the terms set forth below shall have the following meanings:

Business day shall mean a calendar day in which the school is open for business and does not include any school day where the school is closed due to inclement weather, holidays or emergencies.

Financial Record shall mean any account, voucher or contract dealing with the receipt or disbursement of funds or acquisition, use or disposal of services, supplies, materials, equipment or property; or the salary or other payments or expenses paid to any employee of the school, including the individual's name and title; and a financial audit report excluding the audit's underlying work papers.

Public Record shall mean a record, including a financial record, of the school that:

- (i) is not exempt from disclosure under Pennsylvania's Right-to-Know Act;
- (ii) is not exempt from being disclosed under any other federal or state law, regulation, judicial order or decree; and
- (iii) is not protected by a privilege.

Record shall mean information, regardless of physical form or characteristics, that document a transaction or activity of the school and that is created, received or retained pursuant to law or in

connection with a transaction, business or activity of the school. The term “record” includes a document, paper, letter, map, book, tape, photograph, film or sound recording, information stored or maintained electronically and a data-processed or image-processed document.

Requester shall mean any person who is a legal resident of the United States or an agency that requests access to a record pursuant to the Right-to-Know Law.

Response shall mean granting access to a record or written notice from the school grant, denying or partially granting and partially denying access to a record.

Delegation of Responsibility:

Open Records Officer: The Open Records Officer for Esperanza Cyber Charter School is hereby the Administrative Assistant to the CEO of Esperanza Cyber Charter School.

The Open Records Officer shall be responsible for the following duties in order to implement the requirements of this policy:

- 1.) Receive, review and respond to all written requests for access to records submitted to Esperanza Cyber Charter School.
- 2.) If appropriate, direct request to other persons within the school or contracted vendors for a response.
- 3.) Track the school’s progress in responding to requests for access to records.
- 4.) Issue interim and final responses to submitted requests.
- 5.) Maintain a log of all record requests and the school response.
- 6.) Ensure appropriate school staff are trained to perform assigned job functions relative to requests for access to records.

After receiving a written request for access to a public record, the Open Records Officer shall take the following steps in order to track the ongoing status of and final disposition of the school response:

- 1.) Note the date on which the written request was received by the school.
- 2.) Compute the day on which the five (5) business day period for the school response will expire and make a notation of that date on the written request.
- 3.) Maintain an electronic or paper copy of the written request, including all documents submitted with the request, at least until the request has been fulfilled.
- 4.) If the written request is denied, in full or in part, maintain the written request for at least thirty (30) days or, if an appeal is filed to challenge the denial, until a final determination is issued regarding the appeal.

PROCEDURES

Request for Access to Public Records:

Any requester seeking access to or duplication of a public record must submit a written request addressed to the Open Records Officer. All school employees are directed to forward written requests for access to public records received by them to the Open Records Officer. The Open Records Officer will provide a copy of all Right-to-Know requests to the CEO as soon as request is received.

A requester must complete the Right-to Know Request Form created by either the school or the Pennsylvania Office of Open Records when submitting a written request. Copies of the school form may be obtained by request or on the school's official website. The written request must identify or describe the public record sought with sufficient specificity to allow the Open Records Officer to determine which record is being requested, the medium in which the record is requested, and the name and address to which the school should send its response.

The school may, in its sole discretion, honor verbal requests for public records in cases where access can be allowed immediately. However, while verbal requests may be fulfilled by the school, the requester cannot pursue the relief and remedies provided under the RTKL unless the request is in writing.

Any requester may submit a written request to the Open Records Officer using one of the prescribed Right-to-Know Request Forms in the following manner:

In person: At Esperanza Cyber Charter School's main office at 4261 N. 5th Street, 2nd Floor, Philadelphia, PA during regular business hours of 7:45 am until 3:45 pm, Monday through Friday.

By regular mail: Sent to the attention of the Open Records Officer at: Esperanza Cyber Charter School's Charter School 4261 N. 5th Street, 2nd Floor Philadelphia, PA 19140

By facsimile: Sent to the attention of the Open Records Officer at the following facsimile number 215-457-4381. A written request sent via facsimile will not be considered submitted until a complete and legible copy of the facsimile is received by the Open Records Officer.

By e-mail: Sent to the attention of Open Records Officer at openrecords@neacademy.net. An e-mail will not be considered submitted until a complete accessible copy of that e-mail is received by the Open Records Officer.

The Open Records Officer may not require a requester to explain the reason for the request or the intended use of record being requested.

Esperanza Cyber Charter School reserves the right to deny a requester access to a public record if the requester has made repeated requests for the same record, the record has already been provided to the requester and the repeated requests have placed an unreasonable burden on the school.

Esperanza Cyber Charter School reserves the right to require the requester to produce photographic identification to validate that the requester is a legal resident of the United States to the extent allowed by the Right-to-Know Law.

The school shall cooperate with individuals with disabilities to make public records available in an appropriate format, upon request and with sufficient advanced notice.

Response to Written Request:

Upon receipt of a written request for access to a record, the Open Records Officer shall make a good faith effort to determine if the requested record is a public record and if the school has possession, custody or control of that record.

The Open Records Officer shall respond as promptly as possible under the existing circumstances, and the initial response time shall not exceed five (5) business days from the date the written request is received by the Open Records Officer.

The initial response shall grant access to the requested record, deny access to the requested record, partially grant and partially deny access to the requested record, or notify the requester of the need for an extension of time to fully respond.

Either a final or an interim written response must be made within five (5) business days from the date that the Open Records Officer received the request. If the Open Records Officer fails to respond within that time period, the Open Records Request is deemed denied.

Extension of Time: If the Open Records Officer determines that an extension of time is required to respond to a request, in accordance with the factors stated in law, written notice shall be sent within five (5) business days of receipt of request. The notice shall indicate that the request for access is being reviewed, the reason that the review requires an extension, a reasonable date when the response is expected, and an estimate of applicable fees owed when the record becomes available.

The school may advise that the request is under review if any of the following apply:

- 1.) The requested record requires redaction
- 2.) The request requires the school to retrieve records that are stored in a remote location.
- 3.) The school cannot timely respond due to bona fide and specified staffing limitations.
- 4.) A legal review is necessary to determine if the record is a public record.
- 5.) The request does not comply with the district policies regarding access to records.
- 6.) The requester has failed to pay applicable fees.
- 7.) The extent or nature of the request precludes a response within the required time period.

Up to a thirty (30) day extension for one (1) of the listed reasons does not require the consent of the requester. If the response is not given by the specified date, it shall be deemed denied on the day following that date.

A requester may consent in writing to an extension that exceeds thirty (30) days, in which case the request shall be deemed denied on the day following the date specified in the notice if the Open Records Officer has not provided a response by that date.

Granting of Request: If the Open Records Officer determines that the request will be granted; written notice shall be sent within five (5) business days of receipt of request and shall inform the requester that access is granted. The response shall include any necessary information for access.

Denial of Request: The Open Records Officer may deny a request for access to a record if the requester has made repeated requests for that same record and the repeated requests have placed an unreasonable burden on the District.

The Open Records Officer may deny a request for access to a record when timely access is not possible due to a disaster, or when access may cause physical damage or irreparable harm to the record. To the extent possible, a record's contents shall be made accessible even when the record is physically unavailable.

Information that is not subject to access and is redacted from a public record shall be deemed a denial.

If the Open Records Officer responds to a requester that a copy of the requested record is available for delivery at the front office and the requester does not retrieve the record within sixty (60) days of the School's response, the School shall dispose of the copy and retain any fees paid to date.

If a written request for access to a record is denied or deemed denied, the requester may file an appeal with the state's Office of Open Records within fifteen (15) business days of the mailing date of the Open Records Officer's response or deemed denial.

If the Open Records Officer denies a request for access to a record, whether in whole or in part, a written response shall be sent within five (5) business days of receipt of the request. The response denying the request shall include the following:

- 1.) Description of the record requested.
- 2.) Specific reasons for denial, including a citation of supporting legal authority.
- 3.) Name, title, business address, business telephone number, and signature of the Open Records Officer on whose authority the denial is issued.
- 4.) Date of the response.
- 5.) Procedure for the requester to appeal a denial of access under the Right-to-Know Law.

Partial Grant and Partial Denial of Request: If a requester seeks access to a record determined to contain both public and confidential information, the Open Records Officer shall grant access to the public information contained in that record and redact the confidential information if it is possible to redact the confidential information. Esperanza Cyber Charter School, in its sole discretion, may provide public information contained in a redacted record in a format of its choice, which will allow for timely disclosure of public information while simultaneously protecting against the release of confidential information which is not required to be disclosed. If the confidential information is an integral part of the record and cannot be separated, the district shall deny access to the record.

A person's Social Security number; driver's license number; personal financial information; home, cellular or personal telephone numbers; person e-mail addresses; employee numbers or other

confidential personal identification numbers; the name of a person's spouse, marital status, beneficiary or dependent information; the home address of a law enforcement officer or judge are generally not subject to public disclosure, and therefore will normally be redacted from a record otherwise considered a public record.

Nothing in this section shall preclude the release of the name, position, salary, actual compensation or other payments made to a school employee or School Board member, employment contract, employment-related contracts or the length of service of a School Board member or school employee.

The Open Records Officer shall consult Esperanza Cyber Charter School's administrative regulations under this policy when deciding what information may be redacted from a public record.

If the school redacts information from any record, the redaction will be treated as a partial denial of the record request, and the Open Records Officer will provide the requester with a written response regarding the partial denial, as described in the *Denial of Request* section above.

Third Parties:

If a requester seeks access to a record that Esperanza Cyber Charter School does not possess but it is possessed by a third party with whom the school has contracted to perform a governmental function and which directly relates to that governmental function shall be considered a public record of Esperanza Cyber Charter School.

A written request for a public record possessed by a third party shall be submitted to the Open Records Officer. The Open Records Officer shall process the request for public record possessed by a third party in the same manner as other requests.

The Open Records Officer may assess a duplication fee to make the public record available to the requester, if the third party possessing the record duplicated it in order to make it accessible for public inspection.

When Esperanza Cyber Charter School produces a record that is not a public record in response to a request, the Open Records Officer shall notify any third party that provided the record to the school, the person that is the subject of the record, and the requester.

The Open Records Officer shall notify a third party of a record request if the requested record contains a trade secret or confidential proprietary information, in accordance with law and administrative regulations.

Electronic Access to Public Records:

Esperanza Cyber Charter School may make public records available by publicly accessible electronic means through its official website. When a request is made for a record made available in this manner, the Open Records Officer may respond by notifying a requester that the public record is available on the school website. If the requester is unwilling or unable to access the school website, the requester may within thirty (30) days of the school's response submit a written request to have the record converted to paper. If such a request is made, the school shall provide access to the public record in printed form within five (5) days of the written request.

Esperanza Cyber Charter School will permit electronic access to a public record if the requester requests electronic access and the record exists in electronic form. The school is not required to permit the use of its computers for purpose of electronic access.

If a requester makes a written request to access a public record in electronic form, and the public record exists in that medium, the school will provide access to the record in one (1) of the following manners as decided by the Open Records Officer:

- 1.) Provide a computer disk containing the record in electronic form.
- 2.) Respond with an e-mail containing an attachment or electronic link to the record.
- 3.) Provide a redacted copy of an electronically-stored public record, if confidential information must be redacted from that record to permit access to the public information.

Inspection of Public Records:

After determining that the record requested is a public record, Esperanza Cyber Charter School will allow inspection and duplication. The school will provide access in the medium requested if the record exists in that medium. The school need not create documents, but will provide access to public records in the format in which they exist. The school shall not charge a fee if a requester only seeks to inspect a public record, except where conversion from electronic or paper form is required.

The inspection of a public record by a requester shall take place in one of Esperanza Cyber Charter School's administrative offices during regular business hours; unless an alternative location is designated in advance by the Open Records Officer.

Except for copies made and delivered to a requester pursuant to this policy, no public record shall be removed from the control or supervision of the school. In order to preserve the integrity of its public records and school facilities, the school will take reasonable steps to ensure that a requester does not alter, deface or otherwise damage public records or school facilities. Such reasonable steps may include, but are not limited to: the prohibition of eating and drinking when inspecting public records; employee monitoring of a requester while inspecting public records; and immediate termination of the inspection of public records if the school reasonably believes the requester's conduct would result in damage to its public records or school building.

A requester is required to comply with all Esperanza Cyber Charter School rules and procedures applicable to the public when present in the school building. Esperanza Cyber Charter School may ask a requester to immediately leave its school building if the requester engages in conduct which materially disrupts the operations of the school, accesses or attempts access to unauthorized areas of the school building or records, or threatens, harasses or intimidates school staff or students.

Duplication and Fees:

A public record will be duplicated for the requester, if duplication is requested.

Generally, a requester seeking to obtain a duplicate of a public record is required to appear in person to do so. In appropriate cases, the school may decide, in its sole discretion, to mail or otherwise deliver duplicate copies of public records to a requester.

Esperanza Cyber Charter School will charge fees consistent with the maximum charges established by any duly-promulgated regulations of the Pennsylvania Office of Open Records. The school will attach to this policy the schedule of fees, which may be amended from time to time as appropriate.

The total sum owed shall be paid before the public record is given to the requester. All checks will be made payable to "Esperanza Cyber Charter School." If the duplication or transmission of a public

record will cost one hundred dollars (\$100) or more, that fee must be paid in advance of the request being processed. At no time will Esperanza Cyber Charter School accept cash as a method of payment.

Esperanza Cyber Charter School shall not charge a fee for review of a record to determine whether the record is subject to access.

The Open Records Officer, in its sole discretion, may decide to waive fees associated with the reproduction or delivery of public records if it deems it is in the public interest to do so.

If the Open Record Officer makes copies of a public record in response to a written request, and the requester fails to pick up the copies within ninety (90) days of the school response advising the copies are available for delivery, the copies may be discarded and the school may retain the fees already paid by requester.

There are statutes, regulations and other laws that regulate Esperanza Cyber Charter School's retention and disposition of Records. Esperanza Cyber Charter School shall follow the mandates of the laws and regulations. Neither the Act nor this policy modifies, rescinds or supersedes any retention or disposition schedule established pursuant to law or other regulations.

Filing of Appeals:

If a requester wishes to challenge the written denial or deemed denial of a written request for a public record, the requester must file an appeal with the Pennsylvania Office of Open Records or judicial, legislative or other appeals officer designated under the Right-to-Know Law within fifteen (15) business days from the date of the written denial or deemed denial. The appeal shall be in writing and state the grounds upon which the requester asserts that the requested record is a public record, legislative record or financial record and shall address any grounds stated by Esperanza Cyber Charter School for delaying or denying the request.

Unless otherwise provided by applicable law, the Pennsylvania Office of Open Records shall assign an appeals officer to review the denial.

A person other than Esperanza Cyber Charter School or Requester with a direct interest in the record subject to an appeal under this section may, within fifteen (15) days following receipt of actual knowledge of the appeal but not later than the date the appeals officer issues an order, file a written request to provide information or to appear before the appeals officer or to file information in support of the Requester's or Esperanza Cyber Charter School's position. Copies of the written request shall be sent to the agency and the Requester.

Posting of Policy:

Esperanza Cyber Charter School shall post the following information in its main office in an area accessible to the public and on its official website:

- 1.) Contact information for the open-records officer.
- 2.) Contact information for the State's Office of Open Records or other applicable appeals officer.
- 3.) The form to be used to file a request, with a notation that the State Office of Open Records form may also be used.

- 4.) A copy of this policy, the administrative regulations, the school's request form, and applicable fees.

Current Information for the Office of Open Records:

Physical Address:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, Plaza Level
Harrisburg, PA 17120-0225

Mailing Address:

Commonwealth of Pennsylvania
Office of Open Records
Commonwealth Keystone Building
400 North Street, 4th Floor
Harrisburg, PA 17120-0225

Phone: 717-346-9903

Fax: 717-425-5343

Email: openrecrods@state.pa.us

Executive Director: Terry Mutchler