

CONFIDENTIALITY OF PUPIL RECORDS

5.1	PURPOSE AND SCOPE	5-1
5.2	PARENT RIGHT TO ACCESS PUPIL RECORDS	5-1
5.3	NOTICES TO PARENTS	5-2
5.4	SAFEGUARDS	5-3
5.5	RELEASE OF INFORMATION FROM PUPIL RECORDS	5-3
5.6	LOG OF REQUESTS FOR INFORMATION	5-3
5.7	AMENDMENT OF RECORDS	5-3
5.8	RETENTION & DESTRUCTION OF PUPIL RECORDS	5-4
	5.8. A. MANDATORY PERMANENT RECORDS	5-4
	5.8. B. MANDATORY INTERIM RECORDS	5-5
	5.8. C. PERMITTED RECORDS	5-6
	5.8. D. DESTRUCTION PROCEDURES	5-6
5.9	CONFIDENTIALITY OF PUPIL RECORDS CONTAINING IQ INFORMATION.....	5-6

PUPIL RECORDS

5.1 PURPOSE AND SCOPE

Local Educational Agencies (LEAs) must establish policies and procedures that ensure the protection of parents' rights related to confidentiality of pupil records. Policies and procedures must be consistent with State and federal laws and regulations, including the Family Educational Rights and Privacy Act of 1974 (FERPA) and corresponding California statutes and regulations, including sections 49060, et seq., of the California Education Code and sections 430, et seq., of Title 5 of the California Code of Regulations. Procedures should describe the required notice to parents, right to access pupil records, record keeping procedures, retention and destruction of pupil records, and requests for amendment of pupil records.

5.2 PARENT RIGHT TO ACCESS PUPIL RECORDS

Unless the disclosure of a particular category of pupil records is specifically exempted by statute, parents have the right to inspect and review all pupil records that relate to their child, including those that address the identification, assessment, and educational placement of the child, and the provision of a free, appropriate public education (FAPE), which are collected, maintained, or used by agency.

Each LEA shall permit parents access to records without unnecessary delay and, in no event, more than five (5) business days after the request has been made either orally or in writing. This includes access to and confidentiality of public records including LEAs educating pupils with disabilities in State hospitals, developmental centers, and youth and adult facilities. The LEA may not charge a fee for retrieval of information. The agency may, however, charge a fee for copies of records, which are made for parents, if the fee reflects the actual cost of reproducing the records and does not prevent the parents from exercising their right to inspect and review these records. In order for the fee to be waived for the actual costs of copying the records, the LEA may require evidence to substantiate waiver of such a fee.

Definition of Access:

Access means a personal inspection and review of a record or an accurate copy of a record, an oral description or communication of a record, or receipt of a copy of a record.

5.3 NOTICE TO PARENTS

Parents must be notified, in writing, of their rights to inspect and review the school records of their children. This must be done at the time of initial enrollment and annually thereafter. To the extent practicable, this notice should be in the home language of the pupil and should include information on policies, procedures, and rights related to record keeping including the Family Educational Rights and Privacy Act of 1974 (FERPA). The notice will contain the following specific information:

- The types of records and information contained therein.
- The position of the official responsible for the maintenance of each type of record.
- The location of the log or record required to be maintained.
- Criteria used by the district to define “school officials and employees” and in determining “legitimate educational interest.”
- The policies of the district for reviewing and expunging records.
- The right of the parent to access pupil records.
- The procedures for challenging the content of pupil records.

The cost, if any, charged to the parent for reproducing copies of records

- The categories of information which the institution has designated as directory information.
- Any other rights stated in the California Education Code and the right to file a complaint with Department of Health, Education and Welfare (FERPA).
- Notice of all locations where copies of the policies and procedures regarding the General Education Provisions Act and confidential pupil records may be obtained.

The right to inspect and review also includes responses to reasonable requests for explanations and interpretations of the records and the right to have a representative of the parent inspect and review the records. (See provision regarding written parental releases.) (EC 49061, 49063)

5.4. SAFEGUARDS

LEAs must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

Each LEA must maintain for public inspection a current list of names and positions of those employees who have access to personally identifiable information.

5.5. CONSENT TO RELEASE STUDENT RECORDS

1. Written consent must specify the records to be released, identify the party or class of parties to whom records may be released, state the purpose(s) of the disclosure and be signed and dated by the parent or eligible student.)
2. The recipient of the records must be notified that the transmission of information to others without the written consent of the parent is prohibited; however, information may be shared with other persons within the educational institution obtaining access, as long as such persons have a legitimate interest in the information. Each LEA has the right to share information internally among its employees and contractors having a reasonable need for the information.
3. Whenever a pupil reaches the age of 18 years or is attending an institution of post-secondary education, the permission or consent required of, and the rights accorded to, the parents or guardian of the pupil shall thereafter only be required of, and accorded to, the pupil. (EC 49061, 49073, 49076)

5.6 LOG OF REQUESTS FOR INFORMATION

All requests of individuals or agencies with the exceptions of "other school officials" indicated above and parents, must be recorded in a record or log of requests for information, except for directory information recipients. The log or record must be open to the inspection by a parent and the school officials or his designee responsible for the maintenance of pupil records and to other school officials with legitimate educational interests in the records, and to the Comptroller General of the United States, the Secretary of Health, Education and Welfare, and administrative head of an educational agency as defined in PL 93-380, and state educational authorities as a means of auditing the operation of the system.

The log or record must contain the following information: the name of the requesting party and the legitimate interest of the party. The log should be kept with the student's educational records.

5.7. AMENDMENT OF RECORDS

If parents desire to challenge the content of pupil records, they must establish that one of the specific grounds set forth in the Education Code exists and provide a written request to correct or remove the information to the superintendent. If the superintendent declines to amend the pupil record in question, the parents may appeal this decision to the LEA's governing board.

Grounds for amendment include:

- Inaccurate information;
- Information is unsubstantiated personal conclusion or inference;
- Information is a conclusion or inference outside the observer's area of competence;
- Information is not based on personal observation;
- Misleading information; and/or
- Information in violation of the privacy or other right of the pupil.
(EC 49070)

5.8. RETENTION AND DESTRUCTION OF PUPIL RECORDS

No pupil records may be destroyed except pursuant to established District rules and regulations which must comply with the procedure for destruction of records contained in California Code of Regulations, Title 5, sections 16020 and following, or as provided in Education Code sections 49070 (b) and (c) relating to the destruction of records that have been successfully challenged as inaccurate or unsubstantiated.

Prior to destruction of special education records for students with disabilities, the LEA must first contact, or attempt to contact, the parent/guardian, to inform them that the records are no longer needed and will be destroyed, unless the parent wants to keep them. (CFR 300.573) Otherwise the LEA may proceed with destruction.

An agency may not destroy any educational record if there is an outstanding request to inspect or review them. Logs or records of access must be maintained as long as the educational record to which it pertains is maintained.

As documents are received by the records custodian at each site, he or she shall initial them to indicate the type of records involved. There are three types of records: mandatory permanent (MP), mandatory interim (MI), and permitted (P).

After records are classified, they must then be classified for destruction according to the timelines contained in Title 5.

5.8.A. Mandatory Permanent Records

School districts must indefinitely maintain all “mandatory permanent pupil records for students who were enrolled in a school program within the school district. These records include:

- Legal name of pupil
- Date of birth
- Method of verification of date of birth
- Sex of pupil
- Place of birth
- Name and address of a parent of a minor pupil
- Address of minor pupil if different
- An annual verification of the name and address of the parent and residence of the pupil
- Entering and leaving date for each school year and for any summer session or other extra session
- Subjects taken during each year, half-year, summer session or quarter
- If marks or credits are given, the marks or number of credits toward graduation allowed for work taken
- Verification of, or exemption from, required immunizations
- Date of high school graduation or equivalent
- Evidence of pupil's disability and participation in special education program, if applicable

These mandatory permanent records must be forwarded to a requesting school, but the original or copy must be retained permanently.

Mandatory Permanent Records that have been in inactive status for five years shall be microfilmed or copied into a format that may be accessible at a later date.
(5CCR §§ 430, 432)

5.8.B. Mandatory Interim Records are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed as per California statute or regulation. Mandatory interim pupil records may be destroyed after three

years after a student leaves the school district or their usefulness ceases. These records must be forwarded to all California schools and may be forwarded to other schools. Such records include:

- Access log
- Health records
- Participation in special education programs including required tests, case studies, authorizations and actions necessary to establish eligibility or discharge
- Language training records
- Progress slips and/or notices as required by Education Code Sections 49066 and 49067
- Parental restrictions regarding access to directory information or related stipulations
- Parent rejoinders to challenged records and to disciplinary action
- Parental authorizations or prohibitions of pupil participation in specific programs
- Results of standardized tests administered within the preceding three years (5CCR §§ 430, 432)

5.8.C. Permitted Records

Permitted pupil records has clear importance only to the current educational process of the student. Such records may be destroyed after six months after the student completes or withdraws from the education program. Permitted records include:

- Objective counselor and/or teacher ratings
- Standardized test results older than three years
- Verified reports of relevant behavioral patterns
- All disciplinary notices
- Attendance records not covered in the California Code of Regulation, Title 5 section 400 (records related to ADA or to compulsory education) (5CCR §§ 430, 432)

5.8.D. Destruction Procedures

Destruction of Permitted Records

Permitted pupil records may be destroyed when their usefulness ceases. Notwithstanding the foregoing, special education-related permitted records should ordinarily be retained by an LEA for at least two years after the student ceases to be enrolled in the LEA and may be destroyed thereafter. (5CCR § 437)

Destruction of Mandatory Interim Records

Unless forwarded to another district, mandatory interim pupil records may be retained for at least two years after the student leaves the district or when their usefulness ceases. Destruction shall occur during the third school year following such classification. (5CCR § 437)

5.9 CONFIDENTIALITY OF PUPIL RECORDS

All individually identifiable information is confidential and covered by the rules of access. Essentially all information about the pupil is confidential and access is limited to those school employees with an “educational need to know” and the parent (or student over 18 years of age). Only the parent (or student over 18) may authorize the release of any information.