

PUPIL RECORDS

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STUDENT RECORDS

5.1 PURPOSE AND SCOPE

5.1.A Definition

A "student record" is defined as any item of information, other than directory information, gathered within or outside the district, that is directly related to an identifiable student and maintained by the district or required to be maintained by an employee in the performance of his/her duties. A student record may be recorded in handwriting, print, computer media, video or audio tape, film, microfilm, microfiche or by other means. (EC 49061; EC 49062; 5 CCR 430; 34 CFR 99.3.)

5.1.B Confidentiality of Student Records

All student records are confidential. Generally, schools must have written permission from the parent or eligible student in order to release any information from a student's education record. However, state and federal law allows schools to disclose those records, without consent, to the following parties or under the following conditions:

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.

5.2 PARENT RIGHT TO ACCESS PUPIL RECORDS

Unless the disclosure of a particular category of student 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, which are collected, maintained, or used by agency.

The district shall permit parents access to records without unnecessary delay and, in no event, more than five (5) days after the request has been made either orally or in writing. 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)

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 SAFEGUARDS

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

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

5.4 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. (See Chapter, 16 for Release of Information Form.)
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. LEAs have the right to share information internally among its employees and contractors having a legitimate educational interest in 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)

5.5 LOG OF REQUESTS FOR INFORMATION

All requests of individuals or agencies, with the exceptions of “other school officials” 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.

5.6 CONFIDENTIALITY OF STUDENT RECORDS CONTAINING IQ INFORMATION

In *Larry P. v. Riles*, the Ninth Circuit Court of Appeals enjoined California schools from using standardized intelligence tests for the purpose of identifying African American students for special education and services. (*Larry P. v. Riles* (9th Cir. 1974) 502 F.2d 963.) The rationale behind this decision was that there appeared to be a disproportionate number of African American student found eligible for special education services under the eligibility category of mental retardation based on intelligence testing.

The California Department of Education has also issued a legal advisory prohibiting intelligence or IQ testing of African American students. In 1994, the court held that the *Larry P.* injunction would not prevent the use of IQ testing for purposes other than the identification of African American students for special education, particularly where the parents consent to IQ testing. (*Crawford v. Honig* (9th Cir. 1994) 37 F.3d 485.) However, CDE has not reversed its position that IQ testing of African American student is prohibited. Moreover, the IDEA and the Education Code prohibit the use of discriminatory testing and evaluation materials. (34 CFR 532(a)(1)(i); EC 56320(a).)

For purposes of special education assessment, it is the district's policy that I.Q. tests may not be given to African American students even with parental consent. There are no special education related purposes for which I.Q. tests shall be administered.

PURGING IQ INFORMATION FROM STUDENT RECORDS

When a LEA receives records containing IQ test protocols or results from other agencies, out-of-state school districts, military facilities, or independent assessors, these records shall be forwarded to the parent and any reference to the information shall be blacked out or otherwise destroyed. I.Q. test scores contained in the records shall not become a part of the student's school record.

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.

- 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 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. (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. 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 4906
- 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 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 should 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)