

# PROCEDURAL HANDBOOK

## SECTION

### 11

#### *Procedures Regarding Confidentiality of Student Information/Privacy Rights*

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This section contains information you should know about...

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# **PROCEDURES REGARDING CONFIDENTIALITY OF STUDENT INFORMATION/PRIVACY RIGHTS**

## ***Definitions***

a. "Parent" means a natural parent, an adopted parent, or legal guardian. If the parents are divorced or legally separated, only a parent having legal custody of the pupil may challenge the content of a record pursuant to E.C. Section 49070, offer a written response to a record pursuant to E.C. Section 49072, or consent to release records to others pursuant to E.C. 49075, that either parent may grant consent if both parents have notified, in writing, the school or school district that an agreement has been made. If a pupil has attained the age of 18 years or is attending an institution of postsecondary 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. (E.C. 49061)

b. "Pupil record" means any item of information directly related to an identified pupil, or other than directory information, which is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm or other means.

"Pupil record" does not include informal notes related to a pupil compiled by a school officer or employee that remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute. For purposes of this subdivision, "substitute" means a person who performs the duties of the individual who made the notes on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his or her position. (E.C. 49061)

c. "Access" means a personal inspection and review of a record or an accurate copy of a record, or receipt of an accurate copy of a record, an oral description or communication of a record or an accurate copy of a record and a request to release a copy of any record. (E.C. 49061)

## ***Persons with Access to Student Records***

Persons, agencies or organizations specifically granted access rights pursuant to state law should have access without written parental consent or judicial order. In addition, parental consent is not required when information is shared with other persons within educational institutions, agencies or organizations obtaining access, as long as those persons have a legitimate educational interest in the information. (E.C. 49076)

The following persons or agencies shall have absolute access to any and all student records in accordance with state law:

1. Natural parents, adoptive parents, or legal guardians of students younger than age 18 (E.C. 49069)
  - a. Access to student records and information shall not be denied to a parent because he/she is not the child's custodial parent. (Family Code 3025)

2. Adult students age 18 or older or students under the age of 18 who attend a postsecondary institution, in which case the student shall alone exercise rights related to his/her student records and grant consent for the release of records (E.C. 49061; 34 CFR 99.5)
3. Those so authorized in compliance with a court order or lawfully issued subpoena (E.C. 49077)

In addition, the following persons or agencies shall have access to those particular records that are relevant to the legitimate educational interests of the requester: (E.C. 49076)

1. Natural parents, adoptive parents or legal guardians of a dependent student age 18 or older.
2. Students 16 or older or who have completed the 10<sup>th</sup> grade.
3. School officials and district employees.
4. Members of a school attendance review board, and any volunteer aide age 18 or older who has been investigated, selected and trained by such a board to provide follow-up services to a referred student.
5. Officials and employees of other public schools or school systems where the student intends or is directed to enroll, including local, county or state correctional facilities where educational programs leading to a high school graduation are provided.
6. Federal, state and local officials, as needed for program audits or compliance with law.
7. Any district attorney who is participating in or conducting a truancy mediation program or participating in the presentation of evidence in a truancy petition.
8. A prosecuting agency for consideration against a parent/guardian for failure to comply with compulsory education laws.
9. Any probation officer or district attorney for the purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.
10. Any judge or probation officer for the purposes of conducting a truancy mediation program or for purposes of presenting evidence in a truancy petition. (W & I Code 681) A school district releasing pupil information to a judge or probation officer pursuant to this paragraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.
11. Any county placing agency for the purpose of completing a health and education summary (W & I Code 16010) or for the purpose of fulfilling educational case management responsibilities required by the juvenile court or by law and to assist with the school transfer or enrollment of a pupil.

The Superintendent or designee may release information from student records to the following: (E.C. 49076)

1. Appropriate persons in an emergency if the health and safety of a student or other persons are at stake.
2. Agencies or organizations in connection with a student's application for or receipt of financial aid.
3. Accrediting associations.
4. Under the conditions specified in Education Code 49076, organizations conducting studies on behalf of educational institutions or agencies for the purpose of developing, validating or administering predictive tests, administering student aid programs or improving instruction.
5. Officials and employees of private schools or other school systems where the student is enrolled or intends to enroll.
6. County elections officials for the purpose of identifying students eligible to register to vote and offering such students an opportunity to register.

**Persons, agencies, or organizations not afforded access rights pursuant to state law may be granted access only through written permission of the parent/guardian, adult student or by judicial order. (E.C. 49075)**

Any person or agency granted access is prohibited from releasing information to another person or agency without written permission from the parent/guardian or adult student. (E.C. 49076)

### *Procedures for Access*

Student records shall be maintained in a central file at the school attended by the student or, when records are maintained in different locations, a notation shall be placed in the central file indicating where other records may be found. Parents/guardians shall be notified of the location of student records if not centrally located. (E.C. 49060; Title 5 CCR 433)

Within five days following the date of a request, an authorized person shall be granted access to inspect, review and obtain copies of student records during regular school hours. (E.C. 49069, Title 5 CCR 431)

Qualified certificated personnel shall be available to interpret records when requested. (E.C. 49069)

The custodian of the records shall be responsible for the security of student records and shall assure that access is limited to authorized persons. (Title 5 CCR 433)

Prior to disclosing a record pursuant to a court order, the Superintendent or designee shall, unless otherwise instructed by the order, give the parent/guardian or adult student at least three days' notice of the name of the requesting agency and the specific record requested if lawfully possible within the requirements of the judicial order. (Title 5 CCR 435)

### ***Duplication of Student Records***

To provide copies of any student record, the district shall charge a reasonable fee not to exceed the actual cost of furnishing the copies unless such a fee would effectively prevent a parent from exercising his or her right to inspect and review those records, in which case no fee may be charged. No charge shall be made for providing up to two transcripts or up to two verifications of various records for any former student. No charge shall be made to locate or retrieve any student record. (E.C. 49065, 34 CFR 300.566)

### ***Access Log***

A log shall be maintained for each student's record that lists all persons, agencies or organizations requesting or receiving information from the records and the legitimate educational interest of the requester. (E.C. 49064)

In every instance of inspection by persons who do not have assigned educational responsibility, the school custodian of records shall make an entry in the log indicating the record inspected, the name of the person granted access, the reason access was granted, and the time and circumstances of inspection. (Title 5 CCR 435)

The log does not need to include: (E.C. 49064)

1. Parents/guardians or adult students.
2. Students 16 years of age or older who have completed the 10<sup>th</sup> grade.
3. Parties obtaining district-approved directory information.
4. Parties who provide written parental consent, in which case the consent notice shall be filed with the record pursuant to Education Code 49075.
5. School officials or employees who have legitimate educational interest.

The log shall be accessible only to the parent/guardian, adult student, dependent adult student, and student age 16 years or older or who has completed the 10<sup>th</sup> grade, custodian of records, and certain state/federal officials. (E.C. 49064, Title 5 CCR 432)

### ***Challenging Student Records***

The custodial parent/guardian of any student may submit to the Superintendent or designee a written request to correct or remove from his/her child's records any information concerning the child which he/she alleges to be any of the following: (Education Code 49070)

1. Inaccurate
2. An unsubstantiated personal conclusion or inference
3. A conclusion or inference outside of the observer's area of competence
4. Not based on the personal observation of a named person with the time and place of the observation noted
5. Misleading
6. In violation of the privacy or other rights of the student

When a student grade is challenged, the teacher who gave the grade shall be given an opportunity to state orally, in writing, or both, the reasons for which the grade was given. Insofar as practicable, he/she shall be included in all discussions related to any grade change. In the absence of clerical or mechanical error, fraud, bad faith or incompetency, the student's grade as determined by the teacher shall be final. (Education Code 49066)

Within 30 days of receiving a request to correct or remove information from a record, the Superintendent or designee shall meet with the parent/guardian and with the employee (if still employed) who recorded the information in question. The Superintendent shall then sustain or deny the allegations. (Education Code 49070) If the parent/guardian's allegations are sustained, the Superintendent shall order the correction or removal and destruction of the information. (Education Code 49070)

If the Superintendent denies the allegations, the parent/guardian may write within 30 days to appeal the decision to the Governing Board. Within 30 days of receiving the written appeal, the Board shall meet in closed session with the parent/guardian and the employee (if still employed) who recorded the information in question. The Board shall then decide whether or not to sustain or deny the allegations. If it sustains any or all of the allegations, the Superintendent shall immediately correct or remove and destroy the information from the student's records. (Education Code 49070)

The decision of the Board shall be final. If the decision of the Superintendent or Board is unfavorable to the parent/guardian, the parent/guardian shall have the right to submit a written statement of objections. This statement shall become a part of the student's record. (Education Code 49070)

Both the Superintendent and the Board have the option of appointing a hearing panel to assist in making the decision. The hearing panel may be used at the discretion of the Superintendent or the Board provided that the parent/guardian consents to releasing record information to panel members. (Education Code 49070, 49071) The right to challenge a record becomes the sole right of the student when the student becomes 18 or attends a postsecondary institution. (Education Code 49061)

### ***Recordings***

Recordings of the proceedings of Individualized Education Program Team meetings are considered pupil records and are subject to confidentiality requirements of federal laws and regulations. Parents or guardians have the right to: (a) inspect and review the recordings; (b) request that the recordings be amended if the parent or guardian believes that they contain information that is inaccurate, misleading, or in violation of the rights of privacy or other rights of the child; and (c) challenge, in a hearing, information that the parent or guardian believes is inaccurate, misleading, or in violation of the individual's rights of privacy or other rights.