

STUDENT RECORDS

Parents

Under the Family Educational Rights and Privacy Act (FERPA), parents have the right to inspect and review their children's education records and seek to amend them in certain circumstances. Access to the records must be granted no later than five business days following the date of the request. An educational agency subject to FERPA may not have a policy or practice of disclosing education records without the written consent of the parent or eligible student unless permitted by law.

Educationally Related Mental Health Records

Records of educationally related mental health services are considered "education records" because they are (1) directly related to a student and (2) maintained by the school or party acting for the school.

Because student health information is education records are protected by FERPA, the HIPAA Privacy Rule excludes such information from its coverage. See the exception at paragraph (2)(i) to the definition of "protected health information" in the HIPAA Privacy Rule are 45 CFR § 160.103.

Parents have the right under FERPA to inspect and review these health and medical records because they are "educational records" under FERPA. See 34 CFR §§ 99.10-99.12.

Type of Records

All pupil records are classified as Mandatory Permanent, Mandatory Interim or Permitted. Regulations governing access, transfer, and destruction of records vary according to their classification. Special Education pupil records are classified as Mandatory Interim Records. Therefore, school districts must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages.

Safeguards

One official at each agency (school) must assume responsibility for ensuring the confidentiality of any personal identifiable information. All persons collecting or using personally identifiable information must receive training or instruction regarding the state policies and procedures as stated in the annual program plan. Each agency (school) must maintain for public inspection a current list of names and positions of those employees who have access to personal identifiable information.

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Location of Pupil Records

Records for each individual pupil shall be maintained in a central file at the school attended by the pupil. In Shasta SELPA all out-of-home student records will be housed at Shasta Union High School Districts, Special Education Office. When records are maintained in different locations a notation in the central file as to where such other records may be found is required.

Following are the procedural guidelines:

- All confidential records must be kept in a locked location.
- An access log must be kept in each file.
- An access log must be kept indicating when and who access was given plus when and who records were sent outside the district.
- A list of district personnel who routinely have access to student files must be posted in the room in which the files are located.
- All others must be identified in the file log prior to accessing the file.

Special Education information and material to be included in the student record file:

- Copies of IEPs. Less than or equal to three years old signed by the student's educational right holder.
- Assessment plans and reports, less than or equal to three years old
- Communication to and from parents, including all mandatory information, less than or equal to three years old
- Transition plans (included as necessary)
- Positive behavior support plans (included as necessary)
- Last district annual or triennial, even if older than three years.
- Last district psycho-educational report

Transfers

Confidential records and/or information may be transferred between public schools and public school districts within the state of California without written permission by parent, guardian or student over 18 years of age. Records may be transferred by facsimile or secure modern to appropriate personnel.

Transfer of confidential records and/or information to a public school or district outside the state does require the written consent of parent, guardian, or student over 18 years of age.

Transfer of confidential records and/or information to a private school or any private or public agency or other individual does require the written consent of the parent, guardian or student over 18 years of age.

Access to Student Records

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.

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Those granted access are prohibited from releasing information to another person or agency without written permission from the parent or legal guardian. If the student is 18 or older, the right of consent belongs to the student unless a parent or guardian obtains conservatorship.

Students who are married are considered to be emancipated minors even if younger than 18 years of age.

State and federal laws permit access to records according to the following listings.

An LEA shall not permit access to pupil records to a person without written parental consent or under judicial order except as set forth in this section and as permitted by Part 99 (commencing with Section 99.1) of Title 34 of the Code of Federal Regulations.

Access to those particular records relevant to the legitimate educational interests of the requester shall be permitted to the following:

- School officials and employees of the school district, members of a school attendance review board appointed pursuant to Section 48321 who are authorized representatives of the school district, and any volunteer aide, 18 years of age or older, who has been investigated, selected, and trained by a school attendance review board for the purpose of providing followup services to pupils referred to the school attendance review board, provided that the person has a legitimate educational interest to inspect a record.
- Officials and employees of other public schools or school systems, including local, county, or state correctional facilities where educational programs leading to high school graduation are provided or where the pupil intends to or is directed to enroll, subject to the rights of parents as provided in Section 49068.
- Authorized representatives of the Comptroller General of the United States, the United States Secretary of Education, and state and local educational authorities, or the United States Department of Education's Office for Civil Rights, if the information is necessary to audit or evaluate a state or federally supported educational program, or in connection with the enforcement of, or compliance with, the federal legal requirements that relate to such a program. Records released pursuant to this subparagraph shall comply with the requirements of Section 99.35 of Title 34 of the Code of Federal Regulations.
- Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted before November 19, 1974.
- Parents of a pupil 18 years of age or older who is a dependent as defined in Section 152 of Title 26 of the United States Code.
- A pupil 16 years of age or older or having completed the 10th grade.
- A district attorney who is participating in or conducting a truancy mediation program pursuant to Section 48263.5 of this code or Section 601.3 of the Welfare and Institutions Code, or participating in the presentation of evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code.

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- A district attorney's office for consideration against a parent or guardian for failure to comply with the Compulsory Education Law (Chapter 2 (commencing with Section 48200)) or with Compulsory Continuation Education (Chapter 3 (commencing with Section 48400)).
- A probation officer, district attorney, or counsel of record for a minor for 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.
 - For purposes of this subparagraph, a probation officer, district attorney, and counsel of record for a minor shall be deemed to be local officials for purposes of Section 99.31(a)(5)(i) of Title 34 of the Code of Federal Regulations.
 - Pupil records obtained pursuant to this subparagraph shall be subject to the evidentiary rules described in Section 701 of the Welfare and Institutions Code.
- A judge or probation officer for the purpose of conducting a truancy mediation program for a pupil, or for purposes of presenting evidence in a truancy petition pursuant to Section 681 of the Welfare and Institutions Code. The judge or probation officer shall certify in writing to the school district that the information will be used only for truancy purposes. A school district releasing pupil information to a judge or probation officer pursuant to this subparagraph shall inform, or provide written notification to, the parent or guardian of the pupil within 24 hours of the release of the information.
- A county placing agency when acting as an authorized representative of a state or local educational agency pursuant to subparagraph (C). School districts, county offices of education, and county placing agencies may develop cooperative agreements to facilitate confidential access to and exchange of the pupil information by email, facsimile, electronic format, or other secure means, if the agreement complies with the requirements set forth in Section 99.35 of Title 34 of the Code of Federal Regulations.
- A pupil 14 years of age or older who meets both of the following criteria:
 - The pupil is a homeless child or youth, as defined in paragraph (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)).
 - The pupil is an unaccompanied youth, as defined in paragraph (6) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)).
- (M) An individual who completes items 1 to 4, inclusive, of the Caregiver's Authorization Affidavit, as provided in Section 6552 of the Family Code, and signs the affidavit for the purpose of enrolling a minor in school.
- An agency caseworker or other representative of a state or local child welfare agency, or tribal organization, as defined in Section 450b of Title 25 of the United States Code, that

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has legal responsibility, in accordance with state or tribal law, for the care and protection of the pupil.

- The agency or organization specified herein may disclose pupil records, or the personally identifiable information contained in those records, to an individual or entity engaged in addressing the pupil's educational needs, if the individual or entity is authorized by the agency or organization to receive the disclosure and the information requested is directly related to the assistance provided by that individual or entity. The records, or the personally identifiable information contained in those records, shall not otherwise be disclosed by that agency or organization, except as provided under the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), state law, including paragraph (3), and tribal law.
- A foster family agency with jurisdiction over a currently enrolled or former pupil, a short-term residential treatment program staff responsible for the education or case management of a pupil, and a caregiver who has direct responsibility for the care of the pupil, including a certified or licensed foster parent, an approved relative or non related extended family member, or a resource family, as defined in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code, pursuant to Section 49069.3 of this code.

School districts may, but are not required to, release information from pupil records to the following:

- Appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons. Schools or school districts releasing information pursuant to this subparagraph shall comply with the requirements set forth in Section 99.32(a)(5) of Title 34 of the Code of Federal Regulations.
- Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid. However, information permitting the personal identification of a pupil or his or her parents may be disclosed only as may be necessary for purposes as to determine the eligibility of the pupil for financial aid, to determine the amount of the financial aid, to determine the conditions that will be imposed regarding the financial aid, or to enforce the terms or conditions of the financial aid.
- Pursuant to Section 99.37 of Title 34 of the Code of Federal Regulations, a county elections official, for the purpose of identifying pupils eligible to register to vote, or for conducting programs to offer pupils an opportunity to register to vote. The information shall not be used for any other purpose or given or transferred to any other person or agency.
- Accrediting associations in order to carry out their accrediting functions.
- Organizations conducting studies for, or on behalf of, educational agencies or institutions for purposes of developing, validating, or administering predictive tests, administering

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student aid programs, and improving instruction, if the studies are conducted in a manner that will not permit the personal identification of pupils or their parents by persons other than representatives of the organizations, the information will be destroyed when no longer needed for the purpose for which it is obtained, and the organization enters into a written agreement with the educational agency or institution that complies with Section 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

- Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to the rights of parents as provided in Section 49068 and in compliance with the requirements in Section 99.34 of Title 34 of the Code of Federal Regulations. This information shall be in addition to the pupil's permanent record transferred pursuant to Section 49068.
- A contractor or consultant with a legitimate educational interest who has a formal written agreement or contract with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant. Notwithstanding the authorization in Section 99.31(a)(1)(i)(B) of Title 34 of the Code of Federal Regulations, a disclosure pursuant to this subparagraph shall not be permitted to a volunteer or other party.

Access with Parent/Guardian Permission

If an agency or person is not included, the above access can only be granted through written permission. Such permission must:

- 1) Specify the nature of the information to be released; and
- 2) Specify the purpose for which the information is released. In addition, the recipient must be informed of, but need not acknowledge in writing restrictions upon further release to another agency or person without specific written authorization.

Parent Access to Student Records

Parents must be notified, in writing, of their rights to inspect and review the school records of their students. This must be done at the time of initial enrollment and annually thereafter. If 15 percent of pupils enrolled speak a single primary language other than English, as determined from census data in the preceding year, then all notices, reports, statements, or records sent to parent or guardian of pupil by school shall, in addition to being written in English, be written in primary language, and may be responded to either in English or primary language.

A lack of English fluency should not preclude a parent or guardian from exercising their educational rights. The school shall take reasonable steps to ensure parents and guardians are properly notified in English and in their home language of rights and opportunities available to them.

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The notice should 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 student records.
- The procedures for challenging the content of student records.
- The cost, if any, is charged to the parent for reproducing copies of records.
- The categories of information that the institution has designated as directory information.
- Any other rights stated in the California Education Code and the right to file a complaint with the Department of Health, Education and Welfare (HEW).
- Notice of all locations where copies of the policies and procedures regarding the General Education Provisions Act and confidential student records may be obtained.
- The right to inspect and review also includes responses to reasonable requests.

Parents may request explanations and interpretations of the records and additionally, have the right to have a representative inspect and review the records. The parent must make the request in writing. The request is given to a certificated staff member who interprets the records where necessary. The certificated staff member may schedule an appointment with the parent within five days to review the contents of the student’s file with the parent. If photocopies are requested, copy the materials and provide the records to the parent within five days of the request.

Destruction of Student Records

Mandatory interim student records may be classified as disposable after determining that their usefulness has ceased or after the student has left the district. Notwithstanding the foregoing, special education mandatory interim student records should ordinarily be retained for at least two years after the student ceases to be enrolled in the LEA. Destruction shall be after the third year in which they are deemed disposable. Permitted student records may be maintained for as long as they have an appropriate education purpose. They may be destroyed when their usefulness ceases. The method of destruction shall assure that records are not available to possible public inspection in the process of destruction. The typically used method is shredding.

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.

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Electronic Records

Records may be maintained electronically pursuant to Education Code Section 8262.1. It is recommended that LEAs maintain the original hard copies of students' IEPs in their pupil records.

Citations: (EC § 48985), (EC § 49061(b)), (EC § 49064), (E.C. § 49061(e)), (E.C. § 49068), (E.C. § 49069), (EC § 49063), (E.C. § 49070(a)-(c)), (EC § 49076(a)(1)), (E.C. § 49076(1)(2)), (EC § 49076.5(a-b)), EC § 49077, (52 CCR § 432(b)(2)), (52 CCR § 432(b)(3)), (52 CCR § 437) (34 CFR § 99.3)