



# SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

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## LEGAL UPDATE

February 28, 2018

**To:** Superintendents, Member School Districts (K-12)

**From:** Damara L. Moore *DM*  
Senior Associate General Counsel

**Subject:** Change in Law Expands Access to Pupil Records  
Memo No. 06-2018

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We write this Legal Update to apprise our clients of a change in the law which expands rights of foster parents and other support agencies to access students' educational records. Senate Bill ("SB") 233 became effective January 1, 2018.<sup>1</sup> The law in no way limits previous laws with respect to parental right to access pupil records.

### Who May Access Pupil Records Without Parental Consent for a Legitimate Educational Purpose.<sup>2</sup>

In addition to the approximately sixteen categories of people and agencies that were already authorized under the Education Code to access pupil records for the legitimate educational interests of students,<sup>3</sup> SB 233 permits access to pupil records to any of the following groups:

- 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;
- A caregiver who has direct responsibility for the care of the pupil, including a certified or licensed foster parent. A caregiver may access the information specified in this section regardless of whether the caregiver has been appointed as the pupil's educational rights holder by a court;
- An approved relative or nonrelated extended family member; and
- A "resource family".<sup>4</sup>

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<sup>1</sup> Ch. 829 (2017). The bill amends several statutes. The changes discussed herein pertain to California Education Code sections 49069.3 and 49076(a)(1)(O).

<sup>2</sup> Cal. Educ. Code § 49076(a)(1)(O).

<sup>3</sup> See Cal. Educ. Code § 49076(a)(1).

<sup>4</sup> The definition of a resource family may be found in Section 1517 of the Health and Safety Code and Section 16519.5 of the Welfare and Institutions Code.



The Legislature authorized the above categories of requesters to receive the following current, or the most recent, specific records from school districts, county offices of education, charter schools, nonpublic schools, and private schools:

- Grades
- Transcripts
- Attendance
- Discipline
- Online communication on platforms established by schools for pupils and parents
- Individualized education programs (“IEP”)
- Section 504 plans<sup>5</sup>

Although not a requirement for local educational agencies, the new law also mandates that a caregiver communicate information to an educational rights holder to facilitate decision making with respect to special education assessments, IEP meetings, and graduation, unless direct communication is not appropriate. Where such communication is not appropriate with the educational rights holder, the communication should be between the direct caregiver and the student’s lawyer or social worker.<sup>6</sup>

### Implications

Your policies regarding access to pupil records should be reviewed and revised to comply with SB 233.

Please contact our office with questions regarding this Legal Update or any other legal matter.

*The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.*

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<sup>5</sup> Cal. Educ. Code §§ 49069.3(a), (b).

<sup>6</sup> Cal. Educ. Code § 49069.3(c).