
Records & Confidentiality Handbook

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Marin Special Education Local Plan Area
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The Basics

Policies and Procedures

CCR,
Title 5 431

Pupil records are a necessary element in describing a student's development in school. It is also essential for the records to be accurate, appropriate, and secure, in accordance with state and federal laws. Such policies and procedures must:

1. Guarantee access to authorized persons within five (5) days of the request.
2. Assure security of all confidential records.
3. Enumerate and describe pupil records collected and maintained.
4. Provide for the annual notification of right of access by parent, legal guardian or eligible student.
5. State that a nominal fee may be charged for copies of records.
6. Specify access restrictions, including criteria for disclosure to "school official with legitimate educational interest".
7. Provide for an access of disclosure log.
8. Provide the process for the correction or removal of information.

Confidentiality

All individually identifiable information is confidential and covered by the rules of access. Essentially all information about a pupil is confidential. and access is limited to those school employees with an "educational need to know" and the parent (or pupil over 18 years of age). Only the parent (or pupil over 18) may authorize the release of any information except under the specific and narrow set of circumstances listed in Section V. Thus, discussion of a specific pupil in a teacher's lunchroom, in a manner, which identifies the pupil, is a clear violation of that pupil's right to privacy. Likewise, posted class lists or lists with student's names and or addresses are also confidential and governed by the same rules.

**All individual
identifiable
information is
confidential**

Definitions

"Parent" means a natural parent, an adopted parent or legal guardian. If the parents are divorced or legally separated, only the parents having legal custody or the pupil may challenge the content of a record pursuant to § 49072.5 or consent to release records to other pursuant § 49075. However, either parent may grant consent if both parents have notified, in writing, the Program Administrator that such an agreement has been made. Whenever a pupil has attained 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 be required of, and accorded to, the pupil.

**Definition of
"parent"
Ed. Code
49061 and
5602 B
Title 5 430**

Where the courts have assigned **“joint custody”** to both parents have full rights of access, consent, etc. If both parents have “joint legal custody”, but one has physical custody, the custodial parent is the one whose signature is required for authorization. If both parents have joint physical custody, either parent can agree/consent and the dissenting parent would then have to seek a court order to stop the evaluation, placement, release of records, etc.

Since the court may declare a child **a ward of the court** and place the child with the natural parents, the exact wording of the court order may be needed to determine who has custody. If a child has been referred to the court, but custody has not yet been determined, the parent retains their rights and except for an “emergency”, a court order (or parent consent) would be necessary in order to show the records to any person other than the parent.

**Ward of the Court
Ed. Code
56028**

“Pupil records” means any item of information directly related to an identifiable pupil, which is maintained or required to be maintained by any employee in the performance of his/her duties whether recorded by handwriting, print, tapes, film, or microfilms, or other means.

**Definition of
“Pupil
Record”**

Pupil records shall not include **informal notes** related to a pupil compiled by a school officer or employee which remain in the sole possession of the maker and are not accessible or revealed to any other person, except a substitute.

**Pupil records
shall not
include
informal notes**

“Access” means a personal inspection and review of a record or an accurate copy of a record; an oral description or communication or a record or an accurate copy of such a record, and a request to release a copy of any record.

**Definition of
“Access”**

“Custodian of Records” is the Program Administrator (principal, program manager, coordinator, or consultant) designated by the Superintendent.

**Definition of
“Custodian of
Records”**

Custodian of Records

Each program administrator (Custodian of Records) is responsible for the security of pupil records maintained by the District and shall devise procedures for assuring that access to such records is limited to authorized persons. The task of the custodian of records is to:

**CCR, Title 5
431 and 433
Responsibility
of Custodian
of Records**

1. Ensure that records are properly assembled, dated, signed, and maintained.
2. Maintain the “Pupil Access Log”.
3. Classify records as to:
 - a. Mandatory Permanent

- b. Mandatory Interim or
- c. Permitted
- 4. Ensure the proper release and/or transfer of the pupil's records.
- 5. Receive and process parental requests for access or challenge to the record.
- 6. Supervise the proper destruction of the records where appropriate.

Some of the above responsibilities may be delegated to appropriate certificated personnel.

Classification & Maintenance of Records

Categories

Pupil records are divided into several categories:

- 1. Mandatory Permanent Records - Those that must be kept in perpetuity.
- 2. Mandatory Interim Records - Those records that are required to be kept for stipulated periods of time and then destroyed.
- 3. Permitted Pupil Records - Those which are kept only as long as they are considered useful.

Personal Notes

Personal Notes which remain the sole possession of the maker and which are not accessible to any other person do not constitute part of a pupil's record. However, the moment any of these notes (sometimes called "personal memory aids") are shared with another, they become part of the pupil's record (Permitted Pupil Records) and all procedures for access, storage, and/or destruction apply. **Informal notes are subject to subpoena if they are the basis for any evidence in a hearing or court.**

Storage

All pupil records must be kept in a safe, secure manner so as to maintain the confidentiality of that information. Locked file cabinets are the preferred method. FERPA requires school districts to use "reasonable methods" to ensure teachers and other school officials obtain access to only those education records in which they have a legitimate education interest. It is the responsibility of the Custodian of Records to ensure that only those with proper access rights are allowed to use or review the records.

Records for each individual pupil shall be maintained in a central file at the school attended by the pupil or if records are maintained in different locations, a notation in the central file as to where such other records may be found is required.

CCR, Title 5
432

See Table I -
Categories of
Records

Personal
Notes

CFR 99.3
FERPA

Title 5, CCR
433

See
"Procedures
Pertaining to
Access to
Pupil
Records"

Records
maintained in
a central file -
notation
where other
records may
be found

Destruction

All school records in California are divided into three groups for the purpose of defining how long records are kept before they are destroyed:

1. Class I - Mandatory Permanent
Must be kept indefinitely by the school district unless microfilmed per §106022(c), Title 5.
2. Class II - Optional Mandatory Interim
Must be kept for three years after their date of origin at which time may be reclassified as Permanent, Optional, or Disposable.
3. Class III - Disposable
The only disposable records are Class III and are to be destroyed by "foolproof methods" so as to maintain the confidentiality of the record. Whenever records are deemed Class III, parents are to be notified in writing.

**See Table I -
Pupil Records**

**See "Sample
Letter"**

Transfer of Records

Whenever, a pupil transfers from one school district to another or to a private school, or transfers from a private school to a school district within California, the pupil's permanent copy of record shall be transferred by the former district or private school upon request of the district of private school where the pupil intends to enroll. Any district requesting a transfer of a records shall notify the parent of his right to receive a copy of the record and a right to a hearing to challenge the content of the record.

**Transfer of
Records
Ed. Code
49068**

1. Mandatory Permanent Pupil Records
When a pupil transfers to another program/school/district (public or private), the Program Administrator shall transfer the pupil's Mandatory Permanent Record or copy thereof, upon request by the district or private school where the pupil intends to enroll. The transfer date and the destination of the pupil record shall be recorded on the district's copy of the Mandatory Permanent Record, which must be kept in perpetuity.
2. Transfer of Special Education Records
Upon receipt of a request by an educational agency when a special education student has enrolled, the former educational agency shall send the pupil's special education records or a copy thereof within five (5) working day.
3. Mandatory Interim Records
Mandatory Interim Records must be forwarded to California public schools and may be forwarded to other schools when the pupil transfers. If not forwarded, and if not reclassified, they will be classified (Class III).
4. Special Education Records
Because districts frequently have treated special education records as if they were different from so-called cumulative records,

separate consideration for such records is warranted. Simply stated, special education records are subject to the same privacy and access rights as other Mandatory Interim Pupil Records. Even though records from physicians may be stamped “confidential” or a psychologist’s report contains sensitive or potentially upsetting information, the parent or eligible student has full rights of access. Of equal importance is the district’s obligation to retain all records required for admission to a special education class or program. Not only are they necessary for audit, but many be necessary to explain/interpret committee actions or Individual Education Plans.

As Mandatory Interim Pupil Records, special education records may be classified as Class III, Disposable, when they are deemed as no longer useful. This could occur only after transfer or withdrawal from a special education program. Even after classified as disposable, Mandatory Interim records must be retained at least three years beyond the date of the record’s creation.

**Special
Education
Records**

Procedures Pertaining to Access to Pupil Records

Parents have an absolute right to access to pupil records pertaining to their children. The program administrator of the program to which a child is being enrolled shall notify a parent of this and other rights pertaining to pupil records upon the date of the pupil’s initial enrollment, and thereafter on an annual basis.

**See Table II -
The Rights of
Parents and
Students
Regarding
Records**

The program administrator shall grant parents access to inspect and review records related to their children and to receive copies during regular school hours and no later than five (5) business days following the date of the written request.

**Ed. Code
49063, 49069,
56504
Title 5,
CAC 5435**

1. The program administrator or psychologist will review the record with the parent and the program administrator shall be responsible for ensuring that qualified certificated personnel are present to interpret records, if requested.
2. Whenever any known information that is part of a pupil’s record is not available to the parent at the time of his/her inspection and review, the program administrator shall notify the parent of the location of the information and the reason why the information was unavailable.
3. The program administrator shall maintain a log for each pupil’s record, which lists all persons or organizations requesting or receiving information from the record (except parents, pupils, school officials/employees with a legitimate education interest and the reason for the request. No information shall be released to any person or organization, except certificated school personnel with a

**Log of
Important
Contacts**

legitimate education interest without prior written consent of the parent. The log shall be open to inspection only to a parent and the school official or his/her designee responsible for the maintenance of pupil records.

**Ed. Code
49065**

4. Whenever a parent requests a copy of any pupil record, the School District may make a reasonable charge in an amount not to exceed the actual cost of furnishing copies, however, that no charge shall be made for furnishing:
 - A. Up to two transcripts of former pupil's records, or
 - B. Up to two verifications of various records of former pupils.

**Categories of
Access
Ed. Code
49076, 49077**

Categories of Access

State and federal laws permit access to records according to the following categories listed below. Those granted access are prohibited from releasing information to another person or agency without written permission from the parent or legal guardian. (A pupil, age 18 or older, has the right of consent.)

**A pupil, age
18 or older,
has the right
of consent**

Mandatory Access

The following persons or agencies with a legitimate educational interest shall have access to pupil records:

**Persons who
shall have
access**

1. Natural parents, adoptive parents, or legal guardian of pupil younger than age 18 (within 5 days of request).
2. School officials and employees with a legitimate educational interest.
3. School Attendance and Review Board members.
4. Other public schools (California) where pupil has enrolled or intends to enroll.*
5. Federal, state, and county officials for program audit or compliance.
6. Natural parent or adoptive parent of dependent pupil who is 18 or older (within 5 days of request).
7. Pupil who is either 16 or has completed the tenth grade.
8. Those so authorized in compliance with court order.
9. Private schools or out-of-state school of anticipated or new enrollment (Mandatory Permanent Pupil Records only/Special Education Records).

Permitted Access

The following persons or agencies may have access:

**Ed. Code
49077**

1. Appropriate persons in an emergency when the health or safety of a student or other person is threatened.
2. Agencies or organizations in connection with students applying for financial aid.
3. Accrediting association.

**Persons or
agencies who
may have
access**

4. Organizations conducting studies on behalf of the school district.
5. Private schools or out-of-state schools (Mandatory Interim and Permitted Pupil Records only).*
6. Those persons or agencies who have written authorization by parent, guardian with custody or pupil, age 18 or older.

**Ed. Code
49068**

*District requesting record must notify parent of right to receive a copy of the record and the right to hearing to challenge the content of the record.

Prohibited Access

**Prohibited
Access**

No access to pupil records shall be permitted to any other person within written parental permission or under judicial order. Such permission must:

1. State the nature of the information to be released; and
2. State 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, person, persons or organization without specific written authorization. However, this paragraph shall not be construed as to require prior parental consent when information within the educational institution, agency, or organization obtaining access, so long as such persons have an equal legitimate interest in the information.

When the Custodian of Records furnishes information in compliance with a court order, he/she should notify the parent and pupil in advance of the compliance, if lawfully possible, within the requirements of the judicial order.

Rights of Parents to Challenge the Pupil Record(s)

Following an inspection and review of his/her pupil's records, the parent of a pupil may challenge the content of any pupil record, which he/she alleges to be:

1. Inaccurate
2. An unsubstantiated personal conclusion or inference.
3. A conclusion or inference outside the observer's area of competence, or
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 rights of the pupil.

**See Tables
II & III**

Procedure for challenging the content(s) of a pupil record:

**Ed. Code
49070, 49071**

1. Should the parent elect to challenge any pupil record, he shall file a written request with the Superintendent, or his/her designee, to correct or remove any information recorded in the written records concerning his/her child.
2. Within 30 days of receipt of such request, the Superintendent or his/her designee shall meet with the parent and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the school district. The Superintendent shall then sustain or deny the allegations.

**Parent may
challenge the
content**

If the Superintendent sustains the allegations, he/she shall order the removal and destruction of the information. If the Superintendent denies and refuses to order the removal of the information, the parent may, within 30 days of the refusal, appeal the decision in writing to the Governing Board of the School District.

**Procedure for
challenging
the content**

- a. Within 30 days of receipt of such an appeal, the Governing Board shall, in closed session with the parent and the certificated employee who recorded the information in question, if any, and if such employee is presently employed by the School District, determine whether or not to sustain or deny the allegations. If the governing board sustains the allegations, it shall order the Superintendent to immediately remove and destroy the information from the written records of the pupil and so inform the parent in writing.
- b. The decision of the Governing Board shall be final. Records of these administrative proceedings shall be maintained in a confidential manner and shall be destroyed one year after the decision of the Governing board unless the parent initiates legal proceedings relative to the disputed information within the prescribed period.
- c. If the final decision of the Governing Board is unfavorable to the parent or if the parent accepts an unfavorable decision by the Superintendent, the parent shall have the right to submit a written statement of his/her objections to the information. This statement shall become a part of the pupil's school record until such time as the information objected to is corrected or removed.

3. To assist in making determination to challenge the content of student records, the Superintendent/Governing Board may convene a hearing panel composed of the following persons, provided that the parent has given written consent to release the information from the relevant pupil's records to the members of the panel so convened:
 - a. Principal of a public school other than the public school at which record is on file. (Principal is appointed to hearing panel shall serve as chairperson.)
 - b. A certificated employee appointed by the chairperson of the certificated employee council, or if no such council exists, a certificated employee appointed by the parent.
 - c. A parent appointed by the Superintendent/Governing Board, depending upon who convenes the panel.
4. The persons appointed pursuant to paragraphs b. and c. of subdivision (3) shall, if possible, not be acquainted with the pupil, his parent or guardian, or the certificated employee who recorded the information, except when the parent or guardian appoints the person pursuant to paragraph 3(b).
5. The hearing panel shall, in closed session, hear the objections to the information of the parent and the testimony of the certificated employee who recorded the information in question, if any, and if the School District presently employs such employee.

The hearing panel shall be provided with verbatim copies of the information, which is the subject of the controversy. Written findings shall be made setting forth the facts and decisions of the panel, and such findings shall be forwarded to the Superintendent/Governing Board.

The proceedings of the hearing shall not be disclosed or discussed by the panel members except in their official capabilities.

6. Whenever a pupil record contains information concerning any disciplinary action taken by the School District personnel in connection with the pupil, the School District shall allow the pupil's parent(s) to include in such pupil record a written statement or response concerning the disciplinary action.

Table I Pupil Records

Types of Records 5 CCR 432

Mandatory Permanent Class I	Mandatory Interim Class II	Permitted Class III
<ul style="list-style-type: none"> A. Legal name B. Date of birth C. Verification of date of birth D. Sex E. Place of birth F. Name and address of parent <ul style="list-style-type: none"> 1. Pupil's residence, if different 2. Annual verification G. Dates of enrollment H. Subjects taken I. Grades and credits toward graduation J. Immunizations/exemptions K. Date of high school graduation or equivalent 	<ul style="list-style-type: none"> A. Access log B. Health records C. Special Education Programs <ul style="list-style-type: none"> 1. Tests 2. Forms 3. Case studies 4. Authorization and actions D. Language training records E. Progress reports F. Parental restrictions re: access to directory information G. Rejoinders to records H. Other parental authorizations or prohibitions I. Standardized tests administered in preceding 3 years 	<p>District may maintain for appropriate educational purposes</p> <ul style="list-style-type: none"> A. Objective staff ratings B. Standardized test results more than 3 years old C. Routine disciplinary data D. Behavior observations E. Disciplinary notices F. Attendance records not otherwise required

Access to Records

Mandatory Access	Permitted Access
<ul style="list-style-type: none"> 1. Natural parents, adoptive parents or legal guardian or pupil younger than 18 2. School officials and employees 3. SARB members 4. Other public schools in California where the pupil intends to enroll 5. Federal, state, and county officials for program audit or compliance 6. Natural parent or adoptive parent of dependent pupil 18 years or older 7. Pupil who is either age 16 or has completed 10th grade 8. Those so authorized in compliance with court order 9. Private schools or out-of-state schools of anticipated or new enrollment (Mandatory Permanent Pupil Records only) 	<ul style="list-style-type: none"> 1. Appropriate persons in an emergency when the health or safety of a student or other person is threatened 2. Agencies or organizations in connection with students applying for financial aid 3. Accrediting association 4. Organizations conducting studies on behalf of the school district 5. Private schools or out-of-state schools (Mandatory Interim and Permitted Pupil Records only) 6. Those persons or agencies who have written authorization by parent, guardian with custody or pupil, age 18 or older

Destruction of Records		
Mandatory Permanent Maintained indefinitely unless microfilmed per Title 5, CCR 16022(e)	Mandatory Interim Unless forwarded to another district, may be adjudged to be disposable when the student leaves the district or when their usefulness ceases. Destruction shall be in accordance with Section 16027 of this title during the third school year following such classification.	Permitted Pupil Records May be destroyed when their usefulness ceases. They may be destroyed after six months following the pupil's completion of or withdrawal from the education program. The method of destruction shall ensure that records are not available to possible public inspection in the process of destruction.

Table II Correction or Removal of Information
<p>Correction or removal based on parent allegations that the content of the record is:</p> <ol style="list-style-type: none"> 1. Inaccurate 2. Conclusion of inference outside the competency area of the observer 3. Unsubstantiated personal conclusion or inference 4. Not based on the personal observation of a named person with time and place of the observation noted 5. Misleading 6. In violation of the privacy or other rights of the pupil

Table III
The Rights of Parents and Students
Regarding Records

Definitions

Access - Disclosure of record including the right to receive a copy at a reasonable cost.

Student - Any individual who is, or has been, in attendance at the institution maintaining an educational record.

Dependent Student - In accordance with Section 152 of the Internal Revenue Code of 1954.

Records of Minor Students (below age 18)	Has Access to Record	Receives Annual Notification	Authorizes Release of Record	Challenges Contents of Record
Natural Parent (or Guardian) with custody	Yes	Yes	Yes	Yes
Natural Parent (or Guardian) with custody	Yes, unless court order specifically denies parent access	Yes/No*	No, unless both parents notify school in writing that agreement made (49061(a))	No
Student below age 16 who has not completed 10th grade	No	No	No	No
Student age 16 or 17 or who has completed 10th grade	Yes	No	No	No
Records of Students Age 18 or Older or Attending Post- Secondary Institutions				
Natural Parent (or Guardian) of dependent eligible student	Yes	Yes	Yes	Yes
Natural Parent without custody	No**	No	No	No
Natural Parent of eligible student (not dependent)	No	No	No	No
Eligible Student	Yes	Yes	Yes	Yes

* Technically, "yes", in practice it is often impossible

** Unless student is dependent of parent without custody

Sample Letter

(Date)

Dear Parents:

As you know, the school maintains various student records concerning your child. though some of these records must be permanently maintained as mandatory permanent records, other records that are no longer needed or useful may be disposed pursuant to law.

In reviewing your child's records, we have determined that there are numerous items which are no longer needed and would therefore like to remove them from permanent file and shred them to prevent improper or unauthorized disclosure.

34 CFR 300.624(a) mandates that, "The public agency must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child."

This letter will serve as notice to you that if we do not hear from you prior to 15 days from the date of this letter, we shall assume that we have your approval to destroy those parts of your child's records which are no longer needed.

Should you have any questions or wish to discuss, in details, any part of this notice, please contact us at _____ at your convenience.

Sincerely,