

# Section K

Access to Student Records



# Introduction

Records of students with disabilities are confidential. Student records must be maintained in locations that insure confidentiality and treated as confidential documents. Student records are protected under Federal regulations (Sections 300.560 to 300.577 of Title 34 of the Code of Federal Regulations), which govern access, student's privacy rights, disclosure of information, development of lists, copy fees, amendment of documents, destruction, and rights to a hearing.

## Classification

All student records are divided into three categories:

### **Mandatory Permanent Student Records**

Registration and directory information such as student's name, address, subjects taken, grades, units earned toward graduation, and transcripts. This information serves as a permanent record for all students enrolled in the local school.

### **Mandatory Interim Records**

This category includes assessment findings, health records, signed parent permission forms, IEPs, and other records gathered for instructional or administrative purposes.

Originals of all special education records including all tests, forms, case studies, and authorizations are classified as Mandatory Interim Records. One exception is the series of Consortium Report Forms, which are classified as Permitted Student Records.

Upon transfer, these records shall be forwarded to the new LEA when a student transfers out of the local school or out of the area. Generally, Mandatory Interim Records should be kept for three years.

### **Permitted Student Records**

Examples of student work, parent notices of meetings, standardized test more than three (3) years old, LEA/County report forms, or general correspondence should be reviewed on an annual basis to see if they need to be maintained.

## Location

The originals of all records classified as “Mandatory Interim” should be kept in the master file. Permitted Records (except examples of student work) should also be kept in the master file.

A professional’s working file contains those items referred to as informal notes by the education code and copies of records contained in the master file. Copies of originals are not records and may be destroyed at any time. Special education records are part of the student record.

## Access to Records

Professionals shall have access to student records (including the student’s IEP) to carry out their responsibilities. It is important that whenever originals of student records are kept in a professional working folder their location must be noted in the master file. For example, it would be necessary for the process checklist to be temporarily kept in the case carrier’s working file while it is being used. Once it is completed, the original should be placed in the master file. During the time the item is with the case carrier, a notice must be inserted in the master file, giving a description of the item, its location, and who is responsible for maintaining the record.

The names of all employees who have regular access to the information contained in the master file must be recorded and kept by the person designated as responsible for the records. Any person whose name is not on the access list may not have access to the records without permission being granted by the parent. In all cases, record of access must be maintained in the student record. The record of access must show the name of the person “checking out” the information, the purpose for acquiring it, and the dates the information is returned.

State and federal laws permit access to records according to the following listings. Those granted access are prohibited from releasing information to another person or agency without written permission from the parent/legal guardian/person with educational rights. (If the student is age 18 or older, the right of consent belongs to the student.) A log of persons or organizations requesting or receiving information from the record and the reason for the request therefore must be maintained. Legitimate requests by school LEA personnel do not need to be recorded, nor do requests from parents or students, nor those disclosures authorized in writing by a parent or eligible student. The log is sealed and is available for review only by the custodian of the records and the person with educational rights or the eligible student.

## Access

The following persons or agencies **shall** have access to student records:

1. Natural parents, adoptive parents or legal guardians of a student younger than age 18 (within five days of request) (see *Section E* for defining a parent)
2. The persons granted educational rights by a court, including Court Appointed Special Advocates (CASA) employees
3. School Attendance Review Board members
4. Other public schools (California) where a student has enrolled or intends to enroll
5. Federal, state, and county officials for program audit or compliance review
6. Agencies specified by law (child abuse, attacks)
7. Student age 16 or completed tenth grade
8. Natural parent or adoptive parent of dependent student age 18 or older (within five days of request)
9. Those so authorized in compliance with court order and school officials and employees for legitimate educational purposes
10. Private schools or out-of-state schools of anticipated or new enrollment

## Permitted Access

The following persons or agencies are permitted access:

1. Appropriate persons in an emergency
2. Agencies or organizations in connection with students applying for financial aid
3. Accrediting association
4. Organizations conducting studies on behalf of the LEA
5. Private schools or out-of-state schools (to Mandatory Interim and Permitted Student Records)
6. Those persons or agencies so authorized by parent or legal guardian with custody (or student if age 18 or older)

## Prohibited Access

If an agency or person is not listed above, access can only be granted through written permission from the parent/legal guardian/person with educational rights.

Such permission must:

1. Specify the nature of the information to be released
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.

## Transfer of Records

California schools are not required to obtain parent permission to forward records. They are required to forward records to any California school of new or intended enrollment.

Mandatory Permanent Student Records must be forwarded to all schools. Mandatory Interim Student Records must be forwarded to California public schools and may be forwarded to any other schools. Permitted Student Records may be forwarded at the discretion of the custodian of the records. Private schools in California are required to forward Mandatory Permanent Records when a student changes enrollment.

If an agency or person provides a written report, pertaining to a specific student, for the school's information, it becomes part of the student's record, and as such, is available to the parent/legal guardian even though it may be marked "confidential." Technically, reports become part of the record only when they are filed or maintained. The custodian of the records should give serious consideration to the educational value of sensitive information before routinely including it as a student record. As alternatives, the report may be summarized in a more useful form, may be returned for revision, or may be rejected and destroyed before it becomes a record.

## REVIEW OF RECORDS

The parent, or student who is 18 years of age or older has the right and shall be provided the opportunity to examine all school records of the student and to receive copies within five days after a request. The parent may request such records orally or in writing. The LEA may charge no more than the actual cost of reproducing such records, however if the cost effectively prevents the parent from exercising the right to receive such copies the LEA shall provide the copies at no cost to the parent or student. (EC 56504)

## CHALLENGING CONTENT OF RECORDS

Following an inspection and review of a student's records, the parent or guardian of the student or former student of the LEA may challenge the content of any student record. The parent or student must file a written request with the superintendent of the LEA to correct or remove information concerning the student, which is alleged to be any of the following:

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

Within 30 days, the superintendent of the LEA shall meet with the employee and the parent. The superintendent shall sustain or deny the allegations. If sustained noted, corrections or deletions shall take place. (EC 49070)

## Destruction of Records

All school student records are classified as continuing records until such time as their usefulness ceases. While they are continuing records, their destruction is governed by a complicated set of guidelines.

Certain items are specifically excluded from destruction restrictions. Student passes, tardy slips, admit slips, notes from home, including verification of illness, individual memorandum between employees of the LEA, and copies of original records are not records and may be destroyed at any time.

A parent/legal guardian may challenge the maintenance control/validity of any pupil record. If this occurs, refer the parent/legal guardian to the school principal, special education administrator, or other appropriate administrator

<b>The Legality of Specific Forms of Disclosure of Personally Identifiable Information without Written Parental Consent</b>	
<ul style="list-style-type: none"> <li>To teachers or LEA officials, including board members?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if the LEA has determined that they have legitimate educational interest.</li> </ul>
<ul style="list-style-type: none"> <li>To officials of another school where the student seeks to enroll?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if a) the LEA first makes a reasonable attempt to notify the parent unless the parent initiated the disclosure, or LEA policy provides such notice, and b) the LEA gives the parent, upon request, a copy of that record and an opportunity for a records hearing.</li> </ul>
<ul style="list-style-type: none"> <li>To organizations conducting educational studies?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if a) the purpose of the study is to develop, validate, or administer predictive tests or to improve instruction; and b) the information is kept confidential from individuals outside that organization and is destroyed when no longer needed for the original purpose.</li> </ul>
<ul style="list-style-type: none"> <li>To accrediting organizations?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if it within their accrediting functions.</li> </ul>
<ul style="list-style-type: none"> <li>To appropriate parties in connection with a health or safety emergency?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if knowledge of the information is strictly necessary to protect the health or safety of the student or other individuals.</li> </ul>
<ul style="list-style-type: none"> <li>Of “directory information,” such as the student’s name, address, telephone number, date and place of birth, and dates of attendance?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if the LEA has duly designated this information as directory according to the required procedures and within the defined scope.</li> </ul>
<ul style="list-style-type: none"> <li>To an organization providing educational or related services to the student?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if the parent was on notice of the disclosure.</li> </ul>
<ul style="list-style-type: none"> <li>To the state’s human services agency for Medicaid reimbursement?</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>
<ul style="list-style-type: none"> <li>To comply with a judicial order or lawfully-issued subpoena?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if the LEA makes a reasonable effort to notify the parent.</li> </ul>
<ul style="list-style-type: none"> <li>To the attorney for the LEA?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if in the course of his or her</li> </ul>

	representation of the LEA.
<ul style="list-style-type: none"> <li>To the attorney or advocate for the parent?</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>
<ul style="list-style-type: none"> <li>To a due process hearing officer after his or her appointment to the child's case?</li> </ul>	<ul style="list-style-type: none"> <li>No, if prior to the hearings.</li> </ul>
<ul style="list-style-type: none"> <li>Of a videotape of the child in his or her classroom?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if within the confines of the due process hearing.</li> </ul>
<ul style="list-style-type: none"> <li>To expert witnesses?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if in preparation for the hearing and with the reminder of redisclosure requirements.</li> </ul>
<ul style="list-style-type: none"> <li>To state officials?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, if part of an audit, evaluation, compliance, or enforcement proceeding.</li> </ul>
<ul style="list-style-type: none"> <li>To the noncustodial parent?</li> </ul>	<ul style="list-style-type: none"> <li>Yes, unless the LEA is presented with a court order, state statute, or legally-binding divorce, separation, or custody document that states otherwise.</li> </ul>
<ul style="list-style-type: none"> <li>To other students or their parents?</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>
<ul style="list-style-type: none"> <li>To a newspaper or the general public under the auspices of a state "sunshine" law?</li> </ul>	<ul style="list-style-type: none"> <li>No.</li> </ul>

Approved by SEOC on August 24, 2006

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