

## STUDENT RECORDS

Each participating agency must protect the confidentiality of personally identifiable information at collection, storage, disclosure, and destruction stages. LEA/districts shall establish, maintain and destroy pupil records as authorized by law. Parents have the right to inspect, and review education records relating to their children that are collected, maintained, or used by the agency. The following guidelines pertain to maintenance of student records:

- One official at each participating agency must assume responsibility for ensuring the confidentiality of any personally identifiable information.
- All personnel collecting or using personally identifiable information must receive training or instruction regarding the state's policies and procedures under 34 CFR 300.123 and 34 CFR part 99 (Family Educational Rights and Privacy Act).
- Each participating agency must maintain, for public inspection, a current listing of the names and positions of those employees within the agency who may have access to personally identifiable information.

### Student Records and Gender Designation

LEAs/districts should update student forms to ensure the indication of non-binary gender is available. The California Department of Education, in its guidance on AB 12661, states, "*when a school district receives documentation that a legal name or gender has been changed, the district must update the student's official record accordingly.*" This would apply to all official student records, including but not limited to enrollment and registrations forms, IEPs, 504 plans, report cards, and transcripts. LEAs/districts should also contact their electronic student information system providers to ensure electronic systems are updated accordingly.

### **Types of Student Records**

Title 5 of the California Code of Regulations, section 432 describes the three types of pupil records in detail; mandatory permanent records, mandatory interim pupil records and permitted records.

### **Further exploration of each:**

#### Mandatory Permanent Records

Mandatory permanent records are those records which the schools have been directed to compile by California statute authorization or authorized administrative directive. Each LEA/district shall indefinitely maintain all mandatory permanent pupil records or an exact copy thereof for every pupil who was enrolled in a school program within that LEA/district. The mandatory permanent pupil record or a copy thereof shall be forwarded by the sending LEA/district on request of the public or private school in which the student has enrolled or intends to enroll. Such records shall include the following:

- Legal name of pupil
- Date of birth
- Method of verification of birth date
- Sex of pupil
- Place of birth
- Name and address of parent of minor pupil
  - Address of minor pupil if different than the above
  - An annual verification of the name and address of the parent and pupil residence
- Entering and leaving date of each school year and for any summer session or other extra session



- Subjects taken during each year, half-year, summer session, or quarter.
- If marks or credit are given, the mark or number of credits toward graduation allows for work taken
- Verification of or exemption from required immunizations
- Date of high school graduation or equivalent

### Mandatory Interim Pupil Records

Mandatory interim pupil records are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed as per California statute or regulation. Such records include:

- A log or record identifying those persons (except authorized school Personnel) or organizations requesting or receiving information from the record. The log or record shall be accessible only to the legal parent or guardian or the eligible pupil, or a dependent adult pupil, or an adult pupil, or the custodian of records.
- Health information, including Child Health Developmental Disabilities Prevention Program verification or waiver
- Participation in special education programs including required tests, case studies, authorizations, and actions necessary to establish eligibility for admission or discharge
- Language training records
- Progress slips and/or notices as required by Education Code Sections 49066 and 49067
- Parental restrictions regarding access to directory information or related stipulations
- Parent or adult pupil rejoinders to challenged records and to disciplinary action
- Parental authorizations or prohibitions of pupil participation in specific programs
- Results of standardized tests administered within the preceding three years.
- Although there is no clear mandate to maintain assessment protocols under Title 5 regulations, it is recommended as best practice that protocols be considered mandatory interim records, and therefore maintained as such.

### Permitted Records

Permitted records are those pupil records which districts may maintain for appropriate educational purposes. Such records may include:

- Objective counselor and/or teacher ratings
- Standardized test results older than three years
- Routine discipline data
- Verified reports of relevant behavioral patterns
- All disciplinary notices.

**NOTE:** The records of students who were assessed but did not qualify for special education aren't required to be kept. However, they can be of assistance in the event of any future evaluation, and may provide evidence that a school fulfilled their Child Find obligations.

### Timelines

- *Mandatory permanent pupil records* must be retained in perpetuity by all California schools.
- *Mandatory interim pupil records* may be determined to be disposable when the student leaves the district or when their usefulness ceases, unless transferred to another district. Mandatory interim pupil records may be destroyed the third school year following such classification.



- *Permitted pupil records* may be destroyed when their usefulness ceases. Permitted pupil records may be destroyed after six months following the pupil's completion or withdrawal from the educational program.

**NOTE:** (Cal. Code Regs., tit. 5, § 437.) The LEA must assure that records are not available to possible public inspection during the destruction process

### Required Notification to District of Residence When Student Leaves a Charter School

A charter school must notify the superintendent of the school district of the pupil's last known address within thirty (30) days if a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason (CA Education Code §47605(d)(3)). Additionally, upon request, charter schools are obligated to provide the LEA/district with a copy of the cumulative record of the pupil, including a transcript of grades or report card and health information. LEAs/districts should maintain a standard notification letter that may be used for this purpose, thereby ensuring compliance with this legal requirement. A sample letter, named Notice of Student Expulsion or Disenrollment, may be found in the SEIS document library.

### **Confidential Special Education Records**

The following guidelines apply to confidential special education records:

#### Special Education Information System (SEIS)

The Special Education Information System (SEIS) is a virtual database that holds electronic versions of each student's IEPs. Not all LEAs/districts use this system. SEIS can only be accessed by authorized users who have a username and password. SEIS is a highly secure database and information is accessible to only a limited number of users per LEA/district. A student's original IEP documents (original hard copies) serve as the legal document, with SEIS serving as a management system for record keeping. Original hard copies of students' IEPs should be printed out and stored in students' confidential file(s).

For more detailed instructions and guidance on SEIS, please contact your SEIS Program Technician at EDCOE or visit the Document Library located within SEIS ([www.seis.org](http://www.seis.org)).

#### Access

Special education records are subject to the same privacy and access right as other mandatory records. In addition, parents have the right to examine all school records of their child that relate to the identification, assessment, and educational placement of the child. Even though records may be stamped "confidential" or contain sensitive information, the parent or eligible student has full right of access. Parents have the right to receive copies within **five business days** of making the request, either orally or in writing. A public educational agency may charge no more than the actual cost of reproducing the records, but if this cost prevents the parent from exercising their right to receive the copies, the copies shall be reproduced at no cost to the parents.

The Family Educational Rights and Privacy Act (FERPA) requires that LEAs / districts inform parents that they have the right to:

- Inspect and review the student's education records
- Seek amendment of the student's records that they believe to be inaccurate, misleading, or otherwise in violation of the student's privacy rights.
- Consent to disclosures of personally identifiable information contained in the student's educational records, except to the extent that FERPA authorizes disclosure without consent.



- File a complaint with the Family Policy Compliance Office (FPCO) alleging the LEA's / district's failure to comply with the requirements of FERPA.

The LEA/district will not permit access to any child's records without written parental permission except as follows:

- LEA/district officials and employees who have a legitimate educational interest including a school system where the child intends to enroll
- Certain state and federal officials for audit purposes
- A pupil 16 years of age or older, having completed the 10th grade who requests access to their own records

The LEA/district may release information from the student's records for the following:

- In the event of emergency and/or when the knowledge of such information is necessary to protect the health or safety of the child and/or others
- To educational organizations (i.e. the California Department of Education) to the extent necessary for the organization's function
- To officials and/or employees of private schools or school systems in which the child is enrolled or intends to enroll

### Confidentiality of Records

All procedural safeguards of the Individuals with Disabilities in Education Act (IDEA) shall be established and maintained. A custodian of records must be appointed by each LEA/district to ensure the confidentiality of any personally identifiable student information. This is usually the case manager, but may be another person who has been trained in confidentiality procedures. The custodian of records is responsible for ensuring that files are not easily accessible to the public. Files shall be located in a secure area. Records of access are maintained for individual files, which include the name of party, date, and purpose of access. (California Education Code §49064).

If an agency or person provides a written report (i.e. assessment reports and protocols) for the school's information, it becomes a part of the pupil's record and therefore becomes available to the parent upon request. If emails are electronically or physically maintained, they become part of the pupil's record and therefore becomes available to the parent upon request. Test protocols are considered to be a part of a pupil's confidential file. Protocols must be maintained in a pupil's confidential file and copies provided to the parent upon request.

### Transfer of Records

When a student transfers from one school to another, records should also be transferred in accordance with state and federal law. California schools are not required to obtain parent permission to forward records. In fact, they are required to forward records to any California school of new or intended enrollment "within five (5) days." Records cannot be withheld for nonpayment of fees or fines (EC 49068). Mandatory permanent pupil records must be forwarded to all schools and a copy must be retained by the sending LEA / district. Private schools in California are required to forward mandatory permanent pupil records.

School personnel must have parental permission to communicate with outside providers about students. The family will need to provide consent through a written exchange of information to authorize transfer of records, verbal and/or email communications, etc., as appropriate. The Family Educational Rights and Privacy Act (FERPA) stipulates different guidelines to schools when communicating about students than the Health Insurance Portability and Accountability Act (HIPAA), with which medical providers are more familiar.

### Special Education Record Request Process



When a parent requests copies of a student's special education records, please use the following process to guide your response:

- Parents have the right to request records verbally or in writing per California Education Code § 56504.
- If a parent's written request is received, the LEA/district shall date stamp the request. If the parent makes a verbal request, the LEA/district shall have a process in place to document the date of the request and the specific files requested.
- The special education director/coordinator and/or LEA/district site administration should be informed of the request so they may assist with this process.
- Provide parents with requested student records within 5 business days without exception. If your school receives a record request the day before a holiday break, you must provide the records within 5 business days, regardless of your school break.
- Once you have provided copies, document how the records requested were provided to the parent (if mailing, it is recommended to use certified mail that provides you with a return receipt).

*1 AB 1266 requires a pupil be permitted to participate in sex-segregated school programs, activities, and facilities including athletic teams and competitions, consistent with his or her gender identity, regardless of the gender listed on the pupil's records.*

