

**SANTA CLARA COUNTY
NORTH WEST SPECIAL EDUCATION LOCAL PLAN AREA**

CONFIDENTIALITY OF PUPIL RECORDS

5.1 PURPOSE AND SCOPE

Local Educational Agencies (LEAs) must establish policies, procedures and rights related to confidentiality of pupil records. Policies and procedures must be consistent with State and federal laws and regulations, including the Family Educational Rights and Privacy Act of 1974 (FERPA). Procedures describe the required notice to parents, right to access pupil records, record keeping procedures, retention and destruction of pupil records, and requests for amendment of pupil records.

5.2 PARENT RIGHT TO ACCESS

Parents have the right to inspect and review all education records that relate to their child with respect to the identification, assessment, and educational placement of the child and the provision of a free, appropriate public education, which are collected, maintained, or used by agency.

Each agency shall permit parents access to records without unnecessary delay no more than five (5) business days after the request has been made either orally or in writing. This includes access to and confidentiality of public records including LEAs educating pupils with disabilities in State hospitals, developmental centers, and youth and adult facilities. The LEA may not charge a fee for retrieval of information. The agency may charge a fee for copies of records, which are made for parents, if the fee does not prevent the parents from exercising their right to inspect and review these records.

5.2.A Definition of Parent:

Natural parent; adoptive parent; legal guardian; child, the child himself (*if of legal age, 14 years if homeless or unaccompanied, 16 years or 18 years or completed tenth grade, depending upon the purpose*); or a surrogate parent who has been appointed. If the parents are divorced or legally separated, only the parent having legal custody may challenge the contents of a record, offer a written response to a challenged record, or consent to the release of records to others, provided however, that either parent may grant consent if both parents have notified, in writing, the school or school district that such an agreement has been made. Both parents have an unqualified right to see all materials in their child's file, unless there is a court order to the contrary.

5.2.B Definition of Access:

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.

5.3 NOTICE TO PARENTS

Parents must be notified, in writing, of their rights to inspect and review the school records of their children. This must be done at the time of initial enrollment and annually thereafter. Notice should be in their native language and include information on policies, procedures, and rights related to record keeping including the Family Educational Rights and Privacy Act of 1974 (FERPA). The notice will 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 pupil records.
- The procedures for challenging the content of pupil records.
- The cost, if any, charged to the parent for reproducing copies of records.
- The categories of information which the institution has designated as directory information.
- Any other rights stated in the California Education Code and the right to file a complaint with Department of Health, Education and Welfare (FERPA).
- Notice of all locations where copies of the policies and procedures regarding the General Education Provisions Act and confidential pupil records may be obtained.

The right to inspect and review also includes responses to reasonable requests for explanations and interpretations of the records and the right to have a representative of the parent inspect and review the records. (See provision regarding written parental releases.)

5.3.A Recommended Procedure:

If a parent wishes to inspect school records, they complete and return “Parent Request for Access to Pupil Records.” (Refer to sample on Page A-1.) When this form is returned, it should be time/date stamped to show when it was received by the school office. Enter program, dates of attendance, teacher and principal on lower portion of form. Log date received, pupil name and program name in the “Parent Access Request Log.” (Refer to sample on Page A-2.)

The request is given to a certificated staff member who interprets the records where necessary. The certificated staff member schedules an appointment with the parent within five business days and reviews the contents of the pupil’s folder with the parent. If photocopies are requested, copy the requested material immediately if possible. If not possible, mail to the parent within one or two days of the request. The Request Form is filed in pupil’s folder.

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. (*EC 49061, 49063*)

5.4. SAFEGUARDS

Agencies/districts must protect the confidentiality of personally identifiable information at collection, storage, disclosure and destruction stages.

One official at each agency must assume responsibility for ensuring the confidentiality of any personally 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 must maintain for public inspection a current list of names and positions of those employees who have access to personally identifiable information.

5.5. RELEASE OF INFORMATION FROM PUPIL RECORDS

5.5.A Release of Directory Information

- (1) At the time of enrollment, and annually thereafter, parents must be given an opportunity to sign an “Objection to Release of Directory Information” Form. When the Form is returned by the parent to the school, the school must file it in the pupil’s records.
- (2) If the parents have not filed an objection, the following directory information may be supplied to employers, prospective employers, representatives of the news media, officials of public agencies and nonprofit agencies:

- | | |
|-------------------------|--|
| - Name | - Degrees and Awards Received |
| - Address | - Participation in officially recognized activities and sports |
| - Telephone | - Weight/height of members of athletic team |
| - Date & place of birth | - Most recent public or private school attended by student |
| - Major field of study | |
| - Dates of attendance | |

5.5.B Release of Information Not Requiring Parent/Guardian Authorization

- (1) The following categories of individuals and agencies are recognized as maybe having a “legitimate educational interest” in the contents of a pupil’s educational records, and if so, be granted access without written parental consent:
 - School officials, including teachers within the educational agency who have a legitimate educational interest, and members of attendance review boards.
 - Officials of other schools or school systems in which the student seeks or intends to enroll.
 - Authorized representatives of the Comptroller General of the United States, the Secretary of Health, Education, and Welfare, an administrative head of an education agency, or by State Educational authorities.
 - State and local officials or authorities to which such information is specifically required to be reported or disclosed pursuant to State statute adopted prior to November 19, 1974.
 - Parents of pupils 18 years or older who are dependents as defined in the IRS Code.
 - Pupils 14 years of age or older who are homeless or unaccompanied, or 16 years or older or having completed the tenth grade who request access.
 - Education Code section 49076 also requires access without written parental consent of any district attorney participating in or conducting a truancy mediation program or in the prosecution of a truancy petition; a prosecuting agency concerning the failure of a parent or guardian to comply with the compulsory education law; a probation officer or district attorney for the purpose of criminal

investigation or investigation of a student who has been declared a ward of the court or involving a condition of probation.

- Subject to regulations of the Secretary in connection with an emergency, appropriate persons if the knowledge of such information is necessary to protect the health or safety of the student or other persons.
- Agencies or organizations in connection with a student's applications for, or receipt of, financial aid.
- County Election Officials
- Accrediting organizations in order to carry out their accrediting functions.
- Organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating or administering predictive tests, administering student aid programs, and improving instruction, if such studies are conducted in such a manner as will not permit the personal identification of students and their parents by persons other than representatives of such organizations and such information will be destroyed when no longer needed for the purpose for which it is conducted.
- Officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll. Upon such requests, the requester must notify the parent of his right to receive a copy of the record and the right to challenge the content of the record.

- (2) A school district is not authorized to permit access to pupil records to any person (except those specified above) without parental or eligible student consent or under judicial order. Information concerning a student shall be furnished in compliance with a court order. The school district shall make a reasonable effort to notify the parent and the pupil in advance of such compliance if lawfully possible within the requirements of the judicial order.

5.5.C Consent to Release Student Records

- (1) Written consent must specify the records to be released, identify the party or class of parties to whom records may be released, state the purpose(s) of the disclosure and be signed and dated by the parent or eligible student.
- (2) The recipient of the records must be notified that the transmission of information to others without the written consent of the parent is prohibited; however, information may be shared with other persons within the educational institution obtaining access, as long as such persons have a legitimate interest in the information.
- (3) Whenever a pupil reaches 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 only be required of, and accorded to, the pupil.

(EC 49061, 49073, 49076)

5.6 LOG OF REQUESTS FOR INFORMATION

All requests of individuals or agencies with the exceptions of “other school officials” above and parents, must be recorded in a record or log of requests for information, except for directory information recipients. The log or record must be open to the inspection by a parent and the school officials or his designee responsible for the maintenance of pupil records and to other school officials with legitimate educational interests in the records, and to the Comptroller General of the United States, the Secretary of Health, Education and Welfare and administrative head of an educational agency as defined in PL 93-380, and state educational authorities as a means of auditing the operation of the system.

The log or record must contain the following information: the name of the requesting party and the legitimate interest of the party. The log should be kept with the student’s educational records.

Recommended Procedure:

- Upon receipt of a written request for “directory” information from a group authorized to receive it, check pupil folder for “objection to release” form. (If no objection form is present, supply information). The law does not require logging requests for directory information.
- If request is oral, verify identity of requester by calling back. If any doubt as to identity of requester, require a request submitted in writing, on official letterhead.
- Upon receipt of a written request for information, ascertain whether or not it falls into the authorized categories as defined in Section above. If it does, supply the information as explained above. If it does not, log request and mail the requester an Exchange of Information form accompanied by the form letter (Appendix A-3).
- When the Exchange of Information form is returned to you, supply information together with transmittal letter (Appendix A-4). The law does not require logging of requests accompanied by authorization.

(EC 49064)



5.7. AMENDMENT OF RECORDS

5.7.A Grounds for Amendment

If parents desire to challenge the content of pupil records, they must establish that one of six specific grounds exists and provide a written request to correct or remove the information to the superintendent.

Grounds for amendment include:

- Inaccurate information.
- Information is unsubstantiated personal conclusion or inference.
- Information is a conclusion or inference outside the observer’s area of competence.
- Information is not based on personal observation
- Misleading information.
- Information in violation of the privacy or other right of the pupil.

(EC 49070)

5.7.B Hearing Procedures

- Within thirty (30) days after receipt of a written request a superintendent or designee meets with the parent and the certificated employee who recorded the information, if the employee is presently employed by the District.
- The superintendent may sustain or deny the allegations of the parent, either permitting the record to stand or authorizing its removal and destruction.
- Within thirty (30) days the parent may file a written appeal to the governing board if the parent is dissatisfied with the decision of the superintendent.
- Within thirty (30) days after receipt of such an appeal the governing board must hold a closed hearing with the parent and with the teacher, if he or she is still employed by the District. The Board's decision is final. Records of the hearing are confidential and are to be destroyed after one year unless further legal action is pending.
- As an alternative, the superintendent and the governing board may convene a hearing panel if the parent gives written consent to release the relevant pupil's records to the members of the panel.
- The hearing panel consists of the chairperson who is a school principal in a school other than the one where the record is located, a certificated employee appointed by the parent, and a parent, appointed by the superintendent or the governing board, who is not acquainted with the pupil.
- The hearing panel meets in closed session to hear from the parent and the teacher who recorded the information, if available. The panel is provided with copies of the record in question and makes written findings of fact and a written decision.
- The findings of the panel are forwarded to the superintendent or the governing board depending on who convened the panel.
- The proceedings of the panel may not be disclosed or discussed by panel members except in their official capacity.
- If, as a result of the hearing, the agency does not agree with the parent, it will inform the parent of the right to place in the child's records a statement commenting on the record or explaining any reasons they disagree with the decision of the agency.

(EC 49070, 49071)

5.8. RETENTION AND DESTRUCTION OF PUPIL RECORDS

No pupil records may be destroyed except pursuant to established District rules and regulations which must comply with the procedure for destruction of records contained in California Code of Regulations, Title 5, sections 16020 and following, or as provided in Education Code sections 49070 (b) and (c) relating to the destruction of records that have been successfully challenged as inaccurate or unsubstantiated.

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.

As documents are received by the records custodian at each site, he or she shall initial them to indicate the type of records involved. There are three types of records: mandatory permanent (MP), mandatory interim (MI), and permitted (P).

After records are classified, they must then be classified for destruction according to the timelines contained in Title 5.

5.8.A Mandatory Permanent Records include:

- Legal name of pupil
- Date of birth
- Method of verification of date of birth
- Sex of pupil
- Place of birth
- Name and address of a parent of a minor pupil
 1. Address of minor pupil if different
 2. An annual verification of the name and address of the parent and residence of the pupil
- Entering and leaving date for 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 credits are given, the marks or number of credits toward graduation allowed for work taken
- Verification of, or exemption from, required immunizations
- Date of high school graduation or equivalent
- Evidence of pupil's disability and participation in special education program, if applicable

These mandatory permanent records must be forwarded to a requesting school, but the original or copy must be retained permanently. This includes many items in the cum file.

Mandatory Permanent Records that have been in inactive status for five years shall be microfilmed.

(5CCR 430,432)

5.8.B Mandatory Interim Records are those records which schools are required to compile and maintain for stipulated periods of time and are then destroyed when usefulness ceases in accordance with Section 16027 of this title during the third school year following such classification. These records must be forwarded to all California schools and may be forwarded to other schools. Such records include:

- Access log
- Health records
- Participation in special education programs including required tests, case studies, authorizations and actions necessary to establish eligibility 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 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

(5CCR 430, 432)

5.8.C Permitted Records

- Objective counselor and/or teacher ratings
- Standardized test results older than three years
- Verified reports of relevant behavioral patterns
- All disciplinary notices
- Attendance records not covered in the California Code of Regulation, Title 5 section 400 (records related to ADA or to compulsory education)

NOTE: A confusing portion of the statute, the term “unless forwarded” language appears to give the district the option of simply forwarding the file to the next school, avoiding the issue of retention altogether. However, unless the school is another California public school, districts should use the three year rule. If the new school is a California public school the mandatory interim records could simply be forwarded on.

(5CCR 430, 432)

5.8.D Destruction Procedures

1. Destruction of Permitted Records

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 educational program.

(5CCR 437)

2. Destruction of Mandatory Interim Records

Unless forwarded to another district, mandatory interim pupil records may be adjudged to be disposable when the student leaves the district or when their usefulness ceases.

Destruction shall occur during the third school year following such classification.

Special Education Records fall into the middle category, “mandatory interim records”. These records may be destroyed three years after the student leaves the district or three years after “usefulness ceases”. The better practice is to destroy records only after the student has been gone from the district for at least three years. If the student is with the district for a long time then the term “usefulness” could be interpreted for a triennial period, thereby making the holding period equal six years. This only applies to Special Education Records, Mandatory Permanent records must be kept forever.

(5CCR 437)

5.9 CONFIDENTIALITY OF PUPIL RECORDS CONTAINING I.Q. INFORMATION

The following guidelines implement the California State Department of Education Directives dated December 3, 1986, and October 15, 1987, regarding the use of I.Q. tests in the assessment of African-American pupils for special education services.

As of September, 1986, school districts may not use intelligence tests in the assessment of African-American pupils who have been referred for special education services. The prohibition against using I.Q. tests for identifying or placing African-American pupils in special education means that parents of African-American pupils shall not be asked if they want to consent to the use of such tests. An I.Q. test may not be given to a African-American pupil even with parental consent. There are no special education related purposes for which I.Q. tests shall be administered.

5.9.A I.Q. Test Protocols

When a school district receives records containing I.Q. test protocols from other agencies, out-of-state school districts, military facilities, or independent assessors, these records shall be forwarded to the parent. I.Q. test scores contained in the records shall not become a part of the pupil's current school record.

5.9.B Pre-existing records containing I.Q. scores or references to information from I.Q. tests must be permanently sealed.

Before sealing the records of these students:

- The parents must be notified that the records will be sealed because of a court decision which prohibits the use of intelligence tests for African-American students for any purpose related to special education. (Appendix A-7)
- A qualified professional (school psychologist) will identify appropriate data contained in the student's educational records that is an I.Q. score or information that was obtained from or relates to an intelligence test.
- The school psychologist will seal all I.Q. related information as described below.
- The school psychologist will purge the I.Q. related information from the educational records. The remaining information will then become part of the student's educational record.

5.9.C Record Sealing Procedure

The school psychologist will place all I.Q. related information in an envelope provided by the school district and seal the envelope. He/she will label the outside of the envelope with the student's name and a notation that the envelope contains sealed educational records and may not be opened. The outside of the envelope shall also indicate that the Director of Special Education must be consulted for information concerning the contents of the envelope.

Sealed records must be maintained by the district for five years.

The sealing process must be completed before a student is reevaluated for special education or transfers to a new district.

5.10 PROOF OF SERVICE BY MAIL FORM

5.10.A Purpose

The purpose of a Proof of Service by Mail form is to create a legal presumption of service of the document(s) by mail. The presumption created may be legally rebuttable when service becomes an issue during a court or administrative proceeding.

5.10.B Recommended Procedures

1. Fill out form as follows*
 - Signer - the person who will actually mail the document(s). This should be a district employee, who would not be directly connected with a potential court or administrative proceeding. A secretary would be a logical person to mail the document(s) and sign the form.
 - Mailing Address - it is imperative that the most current address according to the district's records or knowledge be used.
2. Prepare and sign form. Attach a copy of the signed form to the documents being mailed.
3. Check the appropriate box concerning the method of mailing, which can include the use of the District mail room.
4. Keep the signed original in the student's file as proof of service of the documents by mail.

**Refer to Appendix D for sample forms and letters for above procedures.*



Approved by Executive Council:

<i>SELPA I</i>	<i>1/25/24</i>
<i>SELPA II</i>	<i>1/26/24</i>
<i>SELPA III</i>	<i>1/25/24</i>
<i>SELPA IV</i>	<i>1/26/24</i>
<i>SELPA VII</i>	<i>1/24/24</i>