



**OCDE Legal Services**

**Reference Guide: Disclosure of Student Records**

**January 2015**

**A note about this guide: This brief guide is for informational purposes only and is not intended to replace careful analysis of the relevant statutes. It is a reference guide to supplement understanding of selected statutes. This guide does not constitute legal advice and is not a substitute for legal counsel.**

### ***Providing Student Records to Parents***

- Must provide access/copies within five business days (Education Code<sup>1</sup> section 49069)
- Parents are entitled to access whether or not they are the custodial parent, unless a court orders otherwise (Education Code section 49069; Family Code section 3025)
- Parent must have legal custody to challenge record, submit response to disciplinary action or consent to release of records to others (EC section 49061(a))
- District may charge a reasonable fee for copies, except that no charge shall be made for furnishing up to two transcripts or up to two verifications of various records of former pupils. No charge can be imposed for searching/retrieving the records. (EC section 49065)
- When parent authorizes release to third party, the parent needs to specify, in writing, the records to be released and identify the recipient. The district must inform the third party that further disclosures are prohibited without the written consent of the parent. The parent's consent shall be kept in the student's file. (EC section 49075)

<b>Must Provide:</b>	<b>Not Required to Provide:</b>
Any information (in handwriting, print, tape, film, computer, or other medium) that is directly related to an identifiable student and maintained by the district, required to be maintained by an employee in the performance of his/her duties, or maintained by a party acting for the district. (EC section 49061(b))	Records that are not maintained by the district. (EC section 49061(b))
	Informal notes compiled by a school officer or employee which remain in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a substitute. (EC section 49061(b))

<sup>1</sup> Education Code is referred to as "EC."

## ***Who can Access Student Records?***

### **I. Absolute Right to Access**

Parents/guardians of students younger than age 18 (whether or not they are custodial parent).	EC §§ 49069; Family Code 3025
Adult student age 18 or older or a student under the age of 18 who attends a postsecondary institution.	EC §§ 49061(a); 34 CFR 99.3, 99.5
Any person, agency or organization authorized in compliance with a court order or lawfully issued subpoena; the district must give the parent/guardian three days' notice prior to releasing records in compliance with a court order or subpoena, except when the court has directed the district not to give notice.	EC § 49077; 5 CCR §435; 34 CFR 99.31 (no prior notice required for compliance with court order issued under the Patriot Act)  ** See guidelines for complying with subpoenas, below

### **II. Right to Access if Legitimate Educational Interest**

School officials and employees of the district with "legitimate educational interest." Contractors, consultants and volunteers can access records under this provision IF they are performing services the district would otherwise perform, are under the direct control of the district, and are subject to the non-disclosure rules.	EC §§ 49076(a)(1)(A); 34CFR 99.31
Members of a school attendance review board (SARB) and any volunteer aide (18 or older) selected by the SARB to provide follow-up services	EC § 49076(a)(1)(A)
Officials and employees of other public schools or school systems where the pupil intends to enroll (parents must be notified and given an opportunity to challenge the records).	EC § 49076(a)(1)(B)
Listed federal and state officials where the information is necessary to audit or evaluate a state or federal program or pursuant to a federal or state law.	EC § 49076(a)(1) (C))
Other state and local officials to the extent that information is specifically required to be reported pursuant to state law adopted	EC § 49076(a)(1)(D)

prior to November 19, 1974.	
Parents of a pupil 18 years of age or older who is a tax dependent.	EC § 49076(a)(1)(E)
A pupil 16 years of age or older or having completed the 10 <sup>th</sup> grade.	EC § 49076(a)(1) (F)
A district attorney who is participating in a truancy mediation program or presenting evidence in a truancy petition.	EC § 49076(a)(1)(G)
A district attorney's office for consideration against a parent or guardian for failure to comply with compulsory attendance laws.	EC § 49067(a)(1)(H)
A probation officer or district attorney for the purposes of conducting a criminal investigation or an investigation in regards to declaring a person a ward of the court or involving a violation of a condition of probation.	<p>EC § 49076(a)(1)(I)</p> <p>For purposes of this subparagraph, a probation officer, district attorney, and counsel of record for a minor shall be deemed to be local officials for purposes of Section 99.31(a)(5)(i) of Title 34 of the Code of Federal Regulations.</p> <p>(iii) Pupil records obtained pursuant to this subparagraph shall be subject to the evidentiary rules described in Section 701 of the Welfare and Institutions Code.</p>
A judge or probation officer for the purpose of conducting a truancy mediation program or presenting evidence in a truancy petition. The district must notify the parent of the release of information within 24 hours.	EC § 49076(a)(1)(J)
A county placing agency for the purpose of fulfilling the requirements of the health and education summary required by Welfare and Institutions Code 16010 or fulfilling case management responsibilities required by the juvenile court.	EC § 49076(a)(1)(K)
A pupil 14 years of age or older who meets both of the following criteria:	EC § 49076 (a)(1)(L)
<ul style="list-style-type: none"> <li>(i) The pupil is a homeless child or youth, as defined in paragraph (2) of Section 725 of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(2)).</li> <li>(ii) The pupil is an unaccompanied youth, as defined in paragraph (6) of Section 725</li> </ul>	

of the federal McKinney-Vento Homeless Assistance Act (42 U.S.C. Sec. 11434a(6)).	
An individual who completes items 1 to 4, inclusive, of the Caregiver's Authorization Affidavit, as provided in Section 6552 of the Family Code, and signs the affidavit for the purpose of enrolling a minor in school.	EC § 49076 (a)(1)(M)
<p>(i) An agency caseworker or other representative of a state or local child welfare agency, or tribal organization, as defined in Section 450b of Title 25 of the United States Code, that has legal responsibility, in accordance with state or tribal law, for the care and protection of the pupil.</p> <p>(ii) The agency or organization specified in clause (i) may disclose pupil records, or the personally identifiable information contained in those records, to an individual or entity engaged in addressing the pupil's educational needs, if the individual or entity is authorized by the agency or organization to receive the disclosure and the information requested is directly related to the assistance provided by that individual or entity. The records, or the personally identifiable information contained in those records, shall not otherwise be disclosed by that agency or organization, except as provided under the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g), state law, including paragraph (3), and tribal law.</p>	EC § 49076 (a)(1)(N)  Patterned after Uninterrupted Scholars Act
A designated peace officer is entitled to information specific to a particular pupil's identity and location/transfer of records when there is probable cause that the pupil has been kidnapped and that his/her abductor may have enrolled the pupil in a school. (Check the Education Code for special rules.)	EC § 49076.5
Foster families may access grades, transcripts and IEPs.	EC § 49069.3

### III. Permissible Disclosures (Not Mandated)

Directory information (depending on the annual notice to parents). The annual notice must define what is “directory” and list the possible recipients. Parents can opt out of having directory information released. Directory information cannot be released to private for-profit entities other than employers, prospective employers, and representatives of the news media.	EC § 49061(c), 49073
Appropriate persons in connection with an emergency if necessary to protect the health or safety of a pupil or other persons.	EC § 49076(a)(2)(A)
Agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid (in accordance with the prescribed rules).	EC § 49076(a)(2)(B)
The county elections official for the purpose of identifying pupils eligible to register to vote and for conducting related programs.	EC § 49076(a)(2)(C)
Accrediting associations in order to carry out their accrediting functions.	EC § 49076(a)(2)(D)
Organizations conducting studies for or on behalf of educational agencies or institutions (in accordance with the prescribed rules).	EC § 49076(a)(2)(E)
Officials and employees of private schools where the pupil is enrolled or intends to enroll, subject to the rights of parents under EC § 49068.	EC § 49076(a)(2)(F)
A contractor or consultant with a legitimate educational interest who has a formal written agreement or contract with the school district regarding the provision of outsourced institutional services or functions by the contractor or consultant. Notwithstanding the authorization in Section 99.31(a)(1)(i)(B) of Title 34 of the Code of Federal Regulations, a disclosure pursuant to this subparagraph shall not be permitted to a volunteer or other party.	EC § 49076(a)(2)(G)

Local health departments may receive immunization records (prior notice to parents and other safeguards required)	Health & Safety Code § 120440
---	-------------------------------

EC section 49076 (b) provides:

The officials and authorities to whom pupil records are disclosed pursuant to subdivision (e) of Section 48902 and subparagraph (I) of paragraph (1) of subdivision (a) shall certify in writing to the disclosing school district that the information shall not be disclosed to another party, except as provided under the federal Family Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and state law, without the prior written consent of the parent of the pupil or the person identified as the holder of the pupil's educational rights.

## ***Complying with Civil Subpoenas for Student Records (No Appearance/Testimony)\****

### **What is Required?**

1. Civil subpoena duces tecum (with declaration in support of the subpoena and showing good cause for the production of records), **or** Deposition subpoena designating the records to be produced (no affidavit required for this)  
-- The date for production should be no earlier than 15 days after the service of the subpoena
2. Notice to Consumer, which informs the parent of the right to object (or a written authorization to release records signed by the parent)
3. Proof of Service showing the student/parents have been personally served with the subpoena and the Notice to Consumer at least 10 days prior to date set for production of records (15 days notice is required if served by mail)

### **How to Comply?**

1. Notify the parents unless ordered not to do so by the court or when responding to an *ex parte* order issued under the USA Patriot Act. (EC § 49077). Notice should be at least three days' in advance of compliance with the subpoena. (5 CCR §435)
2. Determine whether the parent has properly objected to the disclosure. If the records relate to a party to the lawsuit, the party must file a motion to quash the subpoena in order to prevent the records from being disclosed. If the records relate to a non-party, the non-party need only file a written objection with the subpoenaing party, witness and deposition officer, in order to prevent the disclosure. (Code Civ. Proc. § 1985.3).
3. Determine whether privileged records are sought, which are not subject to disclosure (examples: attorney-client privileged communications; certain special education, medical and mental health professional records.) Check with counsel if you are unsure.
4. Copy the records and send to one of the following: the court (if the records are for trial); to the court reporter (if the records are for deposition); to the administrative agency (if the records are for administrative hearing). Enclose the records in an inner envelope, sealed and bearing the name and number of the case, the name of the witness and date of subpoena.
5. Do not send the records before the date set for production.
6. Include an affidavit of the custodian of records certifying that the documents are true and correct copies of pupil records maintained within the district's usual course of business and specify the manner of preparation of the records (EC § 49078), **or** include affidavit stating no records were found.
7. Collect the cost of reproduction and clerical costs per statute (Evidence Code § 1563)

*\*Note: This is a very brief and non-exhaustive list of the rules pertaining to subpoenas. Any question as to whether a subpoena has been properly issued (and how to comply) should be directed to an attorney.*

***Complying with Criminal Subpoenas for Student Records (Not Attendance/Testimony)***

See above rules regarding civil subpoenas for records. However, be advised:

1. Notice to Consumer form is not required, but the district must make a reasonable effort to notify the parents/guardians before the records are released unless otherwise ordered by the court. (Penal Code § 1326; EC § 49077; 5 CCR §435)
2. No fees may be collected for the cost of copying the records.

## Varieties of Pupil Records (Title V, California Code of Regulations section 432)

<b>Mandatory Permanent (maintain permanently)</b>	<b>Mandatory Interim (maintain 3 years after usefulness ceases)</b>	<b>Permitted (maintain 6 months after usefulness ceases)</b>
<p>(1) "Mandatory Permanent Pupil Records" are those records which the schools have been directed to compile by California statute authorization or authorized administrative directive. Each school district shall maintain indefinitely all mandatory permanent pupil records or an exact copy thereof for every pupil who was enrolled in a school program within said district. The mandatory permanent pupil record or a copy thereof shall be forwarded by the sending district upon request of the public or private school in which the student has enrolled or intends to enroll. Such records shall include the following</p> <ul style="list-style-type: none"> <li>(A) Legal name of pupil.</li> <li>(B) Date of birth.</li> <li>(C) Method of verification of birth date.</li> <li>(D) Sex of pupil.</li> <li>(E) Place of birth.</li> <li>(F) Name and address of parent of minor pupil.</li> <li>1. Address of minor pupil if different than the above.</li> <li>2. An annual verification of the name and address of the parent and the residence of the pupil.</li> <li>(G) Entering and leaving date of each school year and for any summer session or other extra session.</li> <li>(H) Subjects taken during each year, half-year, summer session, or quarter.</li> <li>(I) If marks or credit are given, the mark or number of credits toward graduation allows for work taken.</li> <li>(J) Verification of or exemption from required immunizations.</li> <li>(K) Date of high school graduation or equivalent.</li> </ul>	<p>"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:</p> <ul style="list-style-type: none"> <li>(A) 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.</li> <li>(B) Health information, including Child Health Developmental Disabilities Prevention Program verification or waiver.</li> <li>(C) Participation in special education programs including required tests, case studies, authorizations, and actions necessary to establish eligibility for admission or discharge.</li> <li>(D) Language training records.</li> <li>(E) Progress slips and/or notices as required by Education Code Sections 49066 and 49067.</li> <li>(F) Parental restrictions regarding access to directory information or related stipulations.</li> <li>(G) Parent or adult pupil rejoinders to challenged records and to disciplinary action.</li> <li>(H) Parental authorizations or prohibitions of pupil participation in specific programs.</li> <li>(I) Results of standardized tests administered within the preceding three years.</li> </ul>	<p>"Permitted Records" are those pupil records which districts may maintain for appropriate educational purposes. Such records may include:</p> <ul style="list-style-type: none"> <li>(A) Objective counselor and/or teacher ratings.</li> <li>(B) Standardized test results older than three years.</li> <li>(C) Routine discipline data.</li> <li>(D) Verified reports of relevant behavioral patterns.</li> <li>(E) All disciplinary notices.</li> <li>(F) Attendance records not covered in the Administrative Code Section 400.*</li> </ul> <p>*Notes from parents (including absence notices) are Class 3 records. Required hard copy retention is 3 years; 4 years is recommended.</p> <p style="text-align: center;"><b>Records Which Are Not Pupil Records</b></p> <p><b>Education Code section 49061 (b):</b>      "Pupil record" does not include informal notes related to a pupil compiled by a school officer or employee that remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute. For purposes of this subdivision, "substitute" means a person who performs the duties of the individual who made the notes on a temporary basis, and does not refer to a person who permanently succeeds the maker of the notes in his or her position.</p> <p>Emails that are not "maintained" by a school district. <i>S.A. v. Tulare County Office of Educ.</i>, 2009 WL 3126322, *7 (E.D. Cal. 2009); see also <i>Owasso Indep. Sch. Dist. No. I-011 v. Falvo</i>, 534 U.S. 426, 432-33 (2002) and 20 U.S.C. §1232g(a)(4)(A) re: FERPA definition of education record being "maintained" by the school district.</p>