

CSBA Sample

Board Policy

Student Records

BP 5125

Students

Note: Student records are governed by both federal and state law (Family Educational Rights and Privacy Act (FERPA) pursuant to Education Code 49069, 5 CCR 430-433, 20 USC 1232g, and 34 CFR 99.1-99.8).

Note: Pursuant to 5 CCR 431, districts are mandated to establish policies and procedures to implement state law and regulations regarding student records, including policies and procedures which enumerate and describe the student records collected and maintained by the district, ensure security of the records, and guarantee access to authorized persons within five days of a request. Education Code 49069 mandates procedures related to parental review of student records. See the accompanying administrative regulation for additional language implementing these mandates.

Note: The privacy of online information of students in prekindergarten through grade 12 is addressed in Business and Professions Code 22580-22587, which prohibit an operator of a web site, online service or application, or mobile application from knowingly using, disclosing, or compiling the personal information of a minor for the purpose of marketing or advertising specified types of products or services; allowing a third party to use, disclose, or compile such information; or selling or disclosing specified student information or knowingly using such student information to engage in targeted advertising to students or parents/guardians or to amass a profile about a preK-12 student. Covered student information includes any personally identifiable information or materials created or provided by a student, parent/guardian, or district employee (e.g., name, contact information, educational record, discipline records, test results, health records, socioeconomic information). Pursuant to Business and Professions Code 22584 and 22586, an operator must delete data under the control of the school or district upon the request of the school or district.

The Governing Board recognizes the importance of keeping accurate, comprehensive student records as required by law. The Superintendent or designee shall establish administrative regulations governing the identification, collection, retention, and security of student records. These regulations shall ensure the rights of authorized persons to have timely access to student records while maintaining the confidentiality of student records consistent with state and federal law.

(cf. 3580 - District Records)

(cf. 4040 - Employee Use of Technology)

(cf. 5125.1 - Release of Directory Information)

(cf. 5125.3 - Challenging Student Records)

The Superintendent or designee shall designate a certificated employee to serve as custodian of records with responsibility for student records at the district level. At each school, the principal or a certificated employee shall be designated as custodian of records for students enrolled at that school. The custodian of records shall be responsible for implementing Board policy and administrative regulation regarding student records. (5 CCR 431)

Note: Pursuant to Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), districts are mandated to adopt policy consistent with a model policy developed by the California Attorney General, which includes the following statement. See the Office of the Attorney General publication Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues.

All appropriate personnel shall receive training regarding district policies and procedures for gathering and handling sensitive student information.

(cf. 4131 - Staff Development)

(cf. 4231 - Staff Development)

(cf. 4331 - Staff Development)

Note: Pursuant to Education Code 49076.7, a district is prohibited from soliciting or collecting social security numbers or the last four digits of social security numbers of students or their parents/guardians, unless otherwise required to do so by state or federal law. One such exception is the collection of the last four digits of the social security number for the purpose of establishing eligibility for a federal benefit program.

The district shall not collect or solicit social security numbers or the last four digits of social security numbers of students or their parents/guardians, unless otherwise required to do so by state or federal law. (Education Code 49076.7)

Note: Education Code 234.7, as added by AB 699 (Ch. 493, Statutes of 2017), prohibits the collection of information or documents regarding the citizenship or immigration status of students or their family members, as provided below. If the district becomes aware of the citizenship or immigration status of any student, it is prohibited from disclosing that information to U.S. Immigration and Customs Enforcement, as such disclosure is not among the limited exceptions specified in law for which student records may be released without parental consent or a lawful judicial order.

Note: Pursuant to Education Code 234.7, districts are mandated to adopt the following paragraphs consistent with the model policy developed by the California Attorney General.

No information or documents regarding the citizenship or immigration status of students or their family members shall be collected, except as required by state or federal law or as required to administer a state or federally supported educational program. The Superintendent or designee shall not disclose student records to a person, agency, or organization for immigration enforcement purposes without parental consent, a court order, or a judicial subpoena. If a district

employee receives such a request, he/she shall immediately report the request to the Superintendent. The Superintendent shall report the request to the Board in a timely manner that ensures the confidentiality and privacy of any potentially identifying information. (Education Code 234.7)

(cf. 5145.13 - Response to Immigration Enforcement)

Note: The following paragraph reflects a requirement of Government Code 8310.3, as added by SB 31 (Ch. 826, Statutes of 2017).

The Superintendent or designee shall not compile a list, registry, or database based on students' national origin, ethnicity, or religious belief, practice, or affiliation, nor shall he/she disclose student information to federal government authorities for the purpose of compiling such a list, registry, or database for purposes of immigration enforcement. Such information may only be compiled or exchanged with other local, state, or federal agencies if the information is aggregated and is not personally identifiable. (Government Code 8310.3)

Student Records from Social Media

Note: The following section is optional. Pursuant to Education Code 49073.6, any district considering a program to gather information from students' social media activity, as defined, must first notify students and parents/guardians and provide an opportunity for public comment. The notification may be provided as part of the annual parental notification required pursuant to Education Code 48980. If such a program is then adopted, the district must comply with program requirements reflected in the section "Student Records from Social Media" in the accompanying administrative regulation.

Note: The district should consult legal counsel before gathering any other online information that does not meet the definition of social media in Education Code 49073.6.

The Superintendent or designee may gather and maintain information from the social media of any district student, provided that the district first notifies students and parents/guardians about the proposed program, offers an opportunity for public comment at a regularly scheduled Board meeting, and gathers only information that directly pertains to school safety or student safety. (Education Code 49073.6)

(cf. 0450 - Comprehensive Safety Plan)

(cf. 5131.2 - Bullying)

(cf. 5145.6 - Parental Notifications)

(cf. 9322 - Agenda/Meeting Materials)

(cf. 9323 - Meeting Conduct)

Contract for Digital Storage, Management, and Retrieval of Student Records

***Note: Education Code 49073.1 authorizes districts to enter into a contract with a third party for the digital storage, management, and retrieval of student records and/or for software designed

for this purpose. A district that chooses to enter into such a contract is mandated to adopt policy allowing such contracts and must ensure that the contract includes all the provisions specified in Education Code 49073.1. Also see BP 3312 - Contracts.***

The Superintendent or designee may enter into a contract with a third party for the digital storage, management, and retrieval of student records and/or to authorize a third party provider of digital software to access, store, and use student records, provided that the contract meets the requirements of Education Code 49073.1 and other applicable state and federal laws.

(cf. 3312 - Contracts)

Legal Reference:

EDUCATION CODE

234.7 Student protections relating to immigration and citizenship status
17604 Contracts
48201 Student records for transfer students who have been suspended/expelled
48853.5 Foster youth; placement, immunizations
48902 Notification of law enforcement of specified violations
48904-48904.3 Withholding grades, diplomas, or transcripts
48918 Rules governing expulsion procedures
48980 Parental notifications
48985 Notices in parent/guardian's primary language
49060-49079 Student records
49091.14 Parental review of curriculum
51747 Independent study
56041.5 Rights of students with disabilities
56050 Surrogate parents
56055 Foster parents
69432.9 Cal Grant program; notification of grade point average

BUSINESS AND PROFESSIONS CODE

22580-22582 Digital privacy
22584-22585 Student Online Personal Information Protection Act
22586-22587 Early Learning Personal Information Protection Act

CODE OF CIVIL PROCEDURE

1985.3 Subpoena duces tecum

FAMILY CODE

3025 Access to records by noncustodial parents
6552 Caregiver's authorization affidavit

GOVERNMENT CODE

6252-6260 Inspection of public records

HEALTH AND SAFETY CODE

120440 Immunizations; disclosure of information

PENAL CODE

245 Assault with deadly weapon

WELFARE AND INSTITUTIONS CODE

681 Truancy petitions

701 Juvenile court law

16010 Health and education records of a minor

CODE OF REGULATIONS, TITLE 5

430-438 Individual student records

16020-16027 Destruction of records of school districts

UNITED STATES CODE, TITLE 20

1232g Family Educational Rights and Privacy Act

1232h Protection of Pupil Rights Amendment

UNITED STATES CODE, TITLE 26

152 Definition of dependent child

UNITED STATES CODE, TITLE 42

11434a McKinney-Vento Homeless Assistance Act; definitions

CODE OF FEDERAL REGULATIONS, TITLE 16

Part 312 Children's Online Privacy Protection Rule

CODE OF FEDERAL REGULATIONS, TITLE 34

99.1-99.67 Family Educational Rights and Privacy

300.501 Opportunity to examine records for parents of student with disability

Management Resources:

CSBA PUBLICATIONS

Legal Guidance on Providing All Children Equal Access to Education, Regardless of Immigration Status, February 2017

CALIFORNIA OFFICE OF THE ATTORNEY GENERAL PUBLICATIONS

Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, April 2018

FEDERAL REGISTER

Final Rule and Analysis of Comments and Changes, Family Educational Rights and Privacy, December 9, 2008, Vol. 73, No. 237, pages 74806-74855

NATIONAL SCHOOL BOARDS ASSOCIATION PUBLICATIONS

Data in the Cloud: A Legal and Policy Guide for School Boards on Student Data Privacy in the Cloud Computing Era, April 2014

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

IDEA and FERPA Confidentiality Provisions, 2014

Joint Guidance on the Application of the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to Student Health Records, 2008

Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Elementary and Secondary Schools, October 2007

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov>

National School Boards Association: <http://www.nsba.org>

U.S. Department of Education, Family Policy Compliance,

<http://www.ed.gov/policy/gen/guid/fpco>

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