

## **CONFIDENTIALITY OF STUDENT RECORDS**

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Charter LEAs shall establish, maintain and destroy pupil records according to regulations adopted by the State Board of Education. The following guidelines apply to confidential special education records.

### **Access:**

Special education records are subject to the same privacy and access right as other Mandatory Interim pupil 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 rights 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 LEA will not permit access to any child’s records without written parental permission except as follows:

- a. Charter LEA officials and employees who have a legitimate educational interest including a school system where the child intends to enroll
- b. Certain state and federal officials for audit purposes
- c. Certain law enforcement agencies for purposes listed in Education Code and Federal Law
- d. A pupil 16 years of age or older, having completed the 10<sup>th</sup> grade who requests access
- e. Students who are married even if younger than 18 years of age.
- f. Charter SELPA Employees

The LEA may release information from the student’s records for the following:

- a. In cases of emergency when the knowledge of such information is necessary to protect the health or safety of the child and/or others
- b. To determine the child’s eligibility for financial aid
- c. To accrediting organizations to the extent necessary to their function
- d. In cooperation with organizations conducting studies and research that does not permit the personal identification of children or their parents by persons not connected with the research and provided that their personally identifiable information is destroyed when no longer needed
- e. To officials and employees of private schools or school systems in which the child is enrolled or intends to enroll.

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.

Confidentiality of Records:

All procedural safeguards of the Individuals with Disabilities in Education Act shall be established and maintained. A custodian of records must be appointed by each LEA 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. Records of access are maintained for individual files, which include the name of party, date, and purpose of access.

Transfer of Records:

When a student moves from one school to another, records should be transferred in accordance with state and federal law. Federal law requires the LEA from which the student moves to notify the parent of the transfer of records along with the parent's right to review, challenge and/or receive a copy of the transferred record. California law specifies that the LEA which receives the student shall be responsible for the notification. Procedurally, both requirements can be met if the Charter LEA provides an annual notification to the parents of every student which specifies that records will be transferred and outlines the other rights cited above. This notice should be provided to all parents each fall and to the parents of every new student upon enrollment.

**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. (Education Code §49068)**

Mandatory Permanent Pupil records must be forwarded to all schools. (The original, or a copy, also must be retained by the sending LEA.) Mandatory Interim Pupil records must be forwarded to California public schools and may be forwarded to any other schools. Permitted pupil records may be forwarded at the discretion of the custodian of the records. Private schools in California are required to forward Mandatory Permanent Pupil Records.

If an agency or person provides a written report for the school's information, it becomes a part of the pupil's record and, as such, is available to the parent even though it may be marked "confidential." (Technically, it becomes a part of the record only when it is 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 pupil record. As alternatives, the report may be summarized in a more useful form, it may be returned for revision, or it may be rejected and destroyed before it becomes a record.)

**Correction or Removal of Information:**

Parents have the right, on request, to receive a list of the types and locations of education records collected, maintained and used by the educational agency. Parents may challenge the content of the student's record if they believe the information in education records collected, maintained or used is inaccurate, misleading, or in violation of the privacy or other rights of the child. This right to challenge becomes the sole right of the student when the student turns 18 or attends a post-secondary institution. The request to remove or amend the content of the student record must be made in writing.

Within 30 days of receiving the request, the Charter CEO or designee shall meet with the parent/student and with the employee (if still employed) who recorded the information in question. The Charter CEO shall then decide whether to sustain the allegations and amend the records as requested or deny the allegations. If the allegations are sustained, the Charter CEO shall order the correction or removal and destruction of the information.

When a student grade is involved, the teacher who gave the grade shall be given an opportunity to state orally, in writing, or both, the reasons why the grade was given before the grade is changed either by the Charter CEO or at the decision of the LEA board. Insofar as practical, the teacher shall be included in all discussions relating to the changing of the grade.

If the Charter CEO disagrees with the request to amend the records, the parent/student may write within 30 days to appeal this decision to the LEA board. Within 30 days of receiving the written appeal, the LEA board shall meet in closed session with the parent and the employee (if still employed) who recorded the information in question. The Charter LEA governing board shall then decide whether or not to sustain or deny the allegations. If the Charter LEA governing board sustains any or all of the allegations, it shall order the Charter CEO to immediately correct or remove and destroy the information in question. The decision of the Charter LEA governing board is final. The records of the Charter LEA governing board proceedings shall be maintained in a confidential manner for one year, after which they will be destroyed, unless the parent initiates legal proceedings within the prescribed period relative to the disputed information.

If the final decision of the Charter LEA governing board is unfavorable to the parent or if the parent accepts an unfavorable decision by the Charter LEA, the parent shall have the right to submit a written statement commenting on the record or explaining any reasons the parent disagrees with the decision of the Charter CEO or the Charter LEA governing board. This explanation shall be included in the records of the child for as long as the record or contested portion is maintained by local educational agency. If the records of the child, or contested portion, is given by the agency to any party, the explanation must also be given to the party.

At the beginning of each school year, parents shall be notified of the availability of the above procedures for challenging student records.

In order to avoid potential challenges, it is recommended that Charter LEA staff receive training which alerts them to the requirements of privacy and access laws. To the degree that a statement describes a student's behavior, the statement can withstand challenges. Ambiguous terms should be avoided, and staff members should restrict their comments to areas of training. In addition, only those observations which have educational relevancy should be recorded. Statements describing unrelated family incidents or unsubstantiated claims are inappropriate for a student's record.

Record Classification and Destruction:

Pupil records—In fact, all school public records—are classified as continuing records until such time as their usefulness ceases. While they are continuing records, their destruction is governed by a rather complicated set of guidelines. Certain items are specifically excluded from destruction restrictions. CCR Title 5, §16020 indicates that copies of originals, pupil passes, tardy slips, admit slips, notes from home, including verification of illness and individual memorandum between employees of the Charter LEA are not records and may be destroyed at any time.

Other pupil-related records are defined within the three categories: mandatory permanent, mandatory interim, and permitted. (See below for a full explanation of each category.)

Mandatory Permanent pupil records became Class 1 permanent records when their usefulness ceases, and thus are never destroyed. *Caveat:* These records or a copy, are retained for every pupil who was ever enrolled in the Charter LEA. A copy of the mandatory permanent records is forwarded for students who transfer.

Mandatory Interim pupil records can be classified as Class 1 permanent or Class III disposable when their usefulness ceases. The Charter LEA is responsible for the classification subject to Charter LEA governing board approval. If mandatory interim records are classified as disposable, they are to be destroyed in accordance with CCR Title 5, §16027. This requires that they be retained for three years beyond the date of origination.

The third category of pupil records – Permitted - may be destroyed whenever their usefulness ceases without the waiting period. However, if a student transfers, graduates or otherwise terminates attendance, such records shall be held six months and then destroyed.

As Mandatory Permanent pupil records, special education records may be classified as Class III, disposable, when they are deemed as no longer useful. This could occur only after transfer or withdrawal from a special education program. Even after classified as disposable, Mandatory Interim records must be retained for at least three years beyond the date of the record's creation.

An important exception applies to those records which were used in assessment for a special education candidate who does not become a special education student. In such cases the

records are Permitted pupil records and can be classified as Class III, disposable, and destroyed whenever their usefulness ceases.