

AMENDED IN SENATE JUNE 16, 2011
AMENDED IN ASSEMBLY MARCH 25, 2011
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 733

Introduced by Assembly Member Ma

February 17, 2011

An act to amend Sections 49076 and 49076.5 of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 733, as amended, Ma. Pupil records: privacy rights.

Existing law prohibits a school district from permitting access to pupil records to any person without written parental consent or judicial order, except as provided.

This bill would make various changes to these pupil record provisions to conform them to federal law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 49076 of the Education Code is amended
2 to read:
3 49076. A school district shall not permit access to pupil records
4 to a person without written parental consent or unless pursuant to
5 judicial order except as set forth in this section and as permitted
6 by Part 99 (commencing with Section 99.1) of Title 34 of the Code
7 of Federal Regulations.

1 (a) Access to those particular records relevant to the legitimate
 2 educational interests of the requester shall be permitted to the
 3 following:

4 (1) School officials and employees of the district, members of
 5 a school attendance review board appointed pursuant to Section
 6 48321, and a volunteer aide, 18 years of age or older, who has
 7 been investigated, selected, and trained by a school attendance
 8 review board for the purpose of providing followup services to
 9 pupils referred to the school attendance review board, provided
 10 that the person has a legitimate educational interest to inspect a
 11 record.

12 (2) Officials and employees of other public schools or school
 13 systems, including local, county, or state correctional facilities
 14 where educational programs leading to high school graduation are
 15 provided or where the pupil intends to or is directed to enroll,
 16 subject to the rights of parents as provided in Section 49068.

17 (3) Authorized representatives of the Comptroller General of
 18 the United States, the Secretary of Education, and state education
 19 officials, or their respective designees, or the United States Office
 20 of Civil Rights, where the information is necessary to audit or
 21 evaluate a state or federally supported education program or
 22 pursuant to a federal or state law, provided that except when
 23 collection of personally identifiable information is specifically
 24 authorized by federal law, data collected by those officials shall
 25 be protected in a manner that will not permit the personal
 26 identification of pupils or their parents by other than those officials,
 27 and personally identifiable data shall be destroyed when no longer
 28 needed for the audit, evaluation, and enforcement of federal legal
 29 requirements.

30 (4) In accordance with ~~Section 99.31 of Title 34 of the Code~~
 31 ~~of Federal Regulations~~ *the federal Family Educational Rights*
 32 *Privacy Act (20 U.S.C. 1232g)*, state and local officials or
 33 authorities to whom the information is specifically allowed to be
 34 reported or disclosed pursuant to state law adopted prior to
 35 November 19, 1974, and state and local officials or authorities to
 36 whom the information is specifically allowed to be reported or
 37 disclosed pursuant to state law adopted after November 19, 1974,
 38 *if the reporting or disclosure concerns the juvenile justice system*
 39 *and the system's ability to effectively serve, prior to adjudication,*
 40 *the pupil whose records are released, and the disclosure of those*

1 *records is permitted pursuant to, and consistent with, Section 99.38*
2 *of Title 34 of the Code of Federal Regulations as that section read*
3 *on January 1, 2009.*

4 (5) Parents of a pupil 18 years of age or older who is a dependent
5 as defined in Section 152 of the Internal Revenue Code of 1986.

6 (6) A pupil 16 years of age or older, or who has completed grade
7 10, and who requests access.

8 (7) A district attorney's office that is participating in or
9 conducting a truancy mediation program pursuant to Section
10 48263.5, or Section 601.3 of the Welfare and Institutions Code,
11 or participating in the presentation of evidence in a truancy petition
12 pursuant to Section 681 of the Welfare and Institutions Code. For
13 purposes of this paragraph, a truancy mediation program under
14 Section 48263.5 concerns the juvenile justice system and the
15 system's ability to effectively serve, prior to adjudication, the pupil
16 whose records are released, and the disclosure of those records is
17 permitted pursuant to, and consistent with, Section 99.38 of Title
18 34 of the Code of Federal Regulations as that section read on
19 January 1, 2009.

20 (8) A ~~prosecuting~~ *agency district attorney's office* for
21 consideration against a parent or guardian for failure to comply
22 with the Compulsory Education Law (Chapter 2 (commencing
23 with Section 48200)) or with Compulsory Continuation Education
24 (Chapter 3 (commencing with Section 48400)) *if the reporting or*
25 *disclosure concerns the juvenile justice system and the system's*
26 *ability to effectively serve, prior to adjudication, the pupil whose*
27 *records are released, and the disclosure of those records is*
28 *permitted pursuant to, and consistent with, Section 99.38 of Title*
29 *34 of the Code of Federal Regulations as that section read on*
30 *January 1, 2009.*

31 (9) A probation officer or district attorney's office for the
32 purposes of conducting an investigation for juvenile adjudication,
33 declaring a person a ward of the court, or involving a violation of
34 a condition of probation, where the records are relevant to the
35 legitimate educational interests of the pupil, as these investigations
36 concern the juvenile justice system and the system's ability to
37 effectively serve, prior to adjudication, the pupil whose records
38 are released, and disclosure of those records is permitted pursuant
39 to, and consistent with, Section 99.38 of Title 34 of the Code of
40 Federal Regulations as that section read on January 1, 2009. Law

1 enforcement records may be released without consent, a subpoena,
2 or a court order.

3 (10) A judge or probation officer for the purpose of conducting
4 a truancy mediation program for a pupil, or for purposes of
5 presenting evidence in a truancy petition pursuant to Section 681
6 of the Welfare and Institutions Code. For purposes of this
7 paragraph, a truancy mediation program under Section 48263.5
8 concerns the juvenile justice system and the system's ability to
9 effectively serve, prior to adjudication, the pupil whose records
10 are released, and the disclosure of those records is permitted
11 pursuant to, and consistent with Section 99.38 of Title 34 of the
12 Code of Federal Regulations as that section read on January 1,
13 2009. The judge or probation officer shall certify in writing to the
14 school district that the information will be used only for truancy
15 purposes. A school district releasing pupil information to a judge
16 or probation officer pursuant to this paragraph shall inform, or
17 provide written notification to, the parent or guardian of the pupil
18 within 24 hours of the release of the information.

19 (11) A county placing agency for the purpose of fulfilling the
20 requirements of the health and education summary required
21 pursuant to Section 16010 of the Welfare and Institutions Code or
22 for the purpose of fulfilling educational case management
23 responsibilities required by the juvenile court or by law and to
24 assist with the school transfer or enrollment of a pupil. School
25 districts, county offices of education, and county placing agencies
26 may develop cooperative agreements to facilitate confidential
27 access to and exchange of the pupil information by ~~electronic mail~~
28 *e-mail*, facsimile, electronic format, or other secure means.

29 (b) School districts may release information from pupil records
30 to the following:

31 (1) Appropriate persons in connection with an emergency if the
32 knowledge of the information is necessary to protect the health or
33 safety of a pupil or other persons.

34 (2) Agencies or organizations in connection with the application
35 of a pupil for, or receipt of, financial aid. However, information
36 permitting the personal identification of a pupil or his or her parents
37 may be disclosed only as may be necessary for purposes as to
38 determine the eligibility of the pupil for financial aid, to determine
39 the amount of the financial aid, to determine the conditions that

1 will be imposed regarding the financial aid, or to enforce the terms
2 or conditions of the financial aid.

3 ~~(3) The county elections official may obtain directory~~
4 ~~information as defined in Section 99.3 of Title 34 of the Code of~~
5 ~~Federal Regulations~~ *A county elections official pursuant to Section*
6 *99.37 of Title 34 of the Code of Federal Regulations, if the*
7 *information is directory information as defined in this paragraph,*
8 for the purpose of identifying pupils eligible to register to vote,
9 and for conducting programs to offer pupils an opportunity to
10 register to vote if the pupil's parent's, or pupils who are 18 years
11 of age or older, have not opted out of participation in this voter
12 registration activity. The directory information that may be
13 disclosed pursuant to this paragraph shall be limited to a pupil's
14 name, address, telephone number, e-mail address, and date of birth,
15 and shall not be used for any other purpose or given or transferred
16 to any other person or agency.

17 (4) Accrediting associations in order to carry out their
18 accrediting functions.

19 (5) Organizations conducting studies for, or on behalf of,
20 educational agencies or institutions for the purpose of developing,
21 validating, or administering predictive tests, administering student
22 aid programs, and improving instruction, if the studies are
23 conducted in a manner that will not permit the personal
24 identification of pupils or their parents by persons other than
25 representatives of the organizations and the information will be
26 destroyed when no longer needed for the purpose for which it is
27 obtained.

28 (6) (A) Officials and employees of private schools or school
29 systems where the pupil is enrolled or intends to enroll, subject to
30 the rights of parents as provided in Section 49068. This information
31 shall be in addition to the pupil's permanent record transferred
32 pursuant to Section 49068.

33 (B) A person, persons, agency, or organization permitted access
34 to pupil records pursuant to this section shall not permit access to
35 any information obtained from those records by any other person,
36 persons, agency, or organization, except for allowable exceptions
37 contained within the Family Educational Rights and Privacy Act
38 of 2001 (20 U.S.C. Sec. 1232g) and state law, without the written
39 consent of the pupil's parent. This paragraph does not require prior
40 parental consent when information obtained pursuant to this section

1 is shared with other persons within the educational institution,
2 agency, or organization obtaining access, so long as those persons
3 have a legitimate educational interest in the information pursuant
4 to Section 99.31 of Title 34 of the Code of Federal Regulations.

5 (7) *As permitted by Part 99 (commencing with Section 99.1) of*
6 *Title 34 of the Code of Federal Regulations, a public school district*
7 *may release pupil records without the consent of a parent or*
8 *guardian if all personally identifiable information has been*
9 *removed, provided the school district has made a reasonable*
10 *determination that a pupil's identity is not personally identifiable,*
11 *whether through single or multiple releases, and has taken into*
12 *account other reasonably available information.*

13 (c) Notwithstanding any other law, a school district, including
14 any county office of education or superintendent of schools, may
15 participate in an interagency data information system that permits
16 access by authorized school officials to a computerized database
17 maintained by a noneducational governmental agency to
18 information or records that are nonprivileged, and where release
19 is authorized as to the requesting agency under state or federal law
20 or regulation, if each of the following requirements is met:

21 (1) Each agency and school district shall develop security
22 procedures or devices by which unauthorized personnel cannot
23 access data contained in the system.

24 (2) Each agency and school district shall develop procedures
25 or devices to secure privileged or confidential data from
26 unauthorized disclosure.

27 (3) Each school district shall comply with the access log
28 requirements of Section 49064.

29 (4) The right of access granted shall not include the right to add,
30 delete, or alter data without the written permission of the agency
31 holding the data.

32 (5) An agency or school district shall not make public or
33 otherwise release information on an individual contained in the
34 database where the information is protected from disclosure or
35 release as to the requesting agency by state or federal law or
36 regulation.

37 (6) A school district, including a county office of education or
38 superintendent of schools, shall not disclose personally identifiable
39 pupil information from educational records into this interagency

1 data information system unless permitted by Part 99 (commencing
2 with Section 99.1) of Title 34 of the Code of Federal Regulations.

3 SEC. 2. Section 49076.5 of the Education Code is amended to
4 read:

5 49076.5. (a) Notwithstanding Section 49076, each school
6 district shall release the information it has specific to a particular
7 pupil's identity and location that relates to the transfer of that
8 pupil's records to another school district within this state or any
9 other state or to a private school in this state to a designated peace
10 officer, upon his or her request, when a proper police purpose
11 exists for the use of that information. As permitted by Part 99
12 (commencing with Section 99.1) of Title 34 of the Code of Federal
13 Regulations, the designated peace officer, or law enforcement
14 agency, shall show the school district that the peace officer or law
15 enforcement agency has obtained prior written consent from one
16 parent, or provide information indicating that there is an emergency
17 in which the information is necessary to protect the health or safety
18 of the pupil *or other individuals*, or that the peace officer or law
19 enforcement agency has obtained a lawfully issued subpoena or a
20 court order.

21 (b) In order to protect the privacy interests of the pupil, a request
22 to a school district for pupil record information pursuant to this
23 section shall meet the following requirements:

24 (1) For purposes of this section, "proper police purpose" means
25 that probable cause exists that the pupil has been kidnapped and
26 that his or her abductor may have enrolled the pupil in a school
27 and that the agency has begun an active investigation.

28 (2) Only designated peace officers and federal criminal
29 investigators and federal law enforcement officers, as defined in
30 Section 830.1 of the Penal Code, whose names have been submitted
31 to the school district in writing by a law enforcement agency, may
32 request and receive the information specified in subdivision (a).
33 Each law enforcement agency shall ensure that each school district
34 has at all times a current list of the names of designated peace
35 officers authorized to request pupil record information.

36 (3) This section does not authorize designated peace officers to
37 obtain any pupil record information other than that authorized by
38 this section.

39 (4) The law enforcement agency requesting the information
40 shall ensure that at no time shall information obtained pursuant to

1 this section be disclosed or used for a purpose other than to assist
2 in the investigation of suspected criminal conduct or kidnapping.
3 A violation of this paragraph shall be punishable as a misdemeanor.

4 (5) The designated peace officer requesting information
5 authorized for release by this section shall make a record on a form
6 created and maintained by the law enforcement agency that shall
7 include the name of the pupil about whom the inquiry was made,
8 the consent of a parent having legal custody of the pupil or a legal
9 guardian, the name of the officer making the inquiry, the date of
10 the inquiry, the name of the school district, the school district
11 employee to whom the request was made, and the information that
12 was requested.

13 (6) Whenever the designated peace officer requesting
14 information authorized for release by this section does so in person,
15 by telephone, or by some means other than in writing, the officer
16 shall provide the school district with a letter confirming the request
17 for pupil record information prior to any release of information.

18 (7) No school district, or officer or employee of the school
19 district, shall be subject to criminal or civil liability for the release
20 of pupil record information in good faith as authorized by this
21 section.