

AMENDED IN ASSEMBLY APRIL 25, 2013
AMENDED IN ASSEMBLY MARCH 19, 2013
CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 643

Introduced by Assembly Member Stone

February 20, 2013

An act to amend ~~Sections 49076 and 49077~~ *Section 49076* of the Education Code, relating to public schools.

LEGISLATIVE COUNSEL'S DIGEST

AB 643, as amended, Stone. Public schools: pupil records: confidentiality.

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 ~~and other 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) A school district shall not permit access to pupil
4 records to a person without written parental consent or under
5 judicial order except as set forth in this section and as permitted

1 by Part 99 (commencing with Section 99.1) of Title 34 of the Code
2 of Federal Regulations.

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

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

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

20 (C) Authorized representatives of the Comptroller General of
21 the United States, the Secretary of Education, and state and local
22 educational authorities, or the United States Department of
23 Education's Office for Civil Rights, if the information is necessary
24 to audit or evaluate a state or federally supported education
25 program, or in connection with the enforcement of, or compliance
26 with, the federal legal requirements that relate to such a program.
27 Records released pursuant to this ~~section~~ *subparagraph* shall
28 comply with the requirements of Section 99.35 of Title 34 of the
29 Code of Federal Regulations.

30 (D) Other state and local officials to the extent that information
31 is specifically required to be reported pursuant to state law adopted
32 before November 19, 1974.

33 (E) Parents of a pupil 18 years of age or older who is a
34 dependent as defined in Section 152 of Title 26 of the United States
35 Code.

36 (F) A pupil 16 years of age or older or having completed the
37 10th grade who requests access.

38 (G) A district attorney who is participating in or conducting a
39 truancy mediation program pursuant to Section 48263.5, or Section
40 601.3 of the Welfare and Institutions Code, or participating in the

1 presentation of evidence in a truancy petition pursuant to Section
2 681 of the Welfare and Institutions Code.

3 (H) A district attorney's office for consideration against a parent
4 or guardian for failure to comply with the Compulsory Education
5 Law (Chapter 2 (commencing with Section 48200)) or with
6 Compulsory Continuation Education (Chapter 3 (commencing
7 with Section 48400)).

8 (I) (i) A probation officer, district attorney, or counsel of record
9 for a minor for purposes of conducting a criminal investigation or
10 an investigation in regards to declaring a person a ward of the court
11 or involving a violation of a condition of probation.

12 (ii) For purposes of this subparagraph, a probation officer,
13 district attorney, and counsel of record for a minor shall be deemed
14 to be local officials for purposes of Section 99.31(a)(5)(i) of Title
15 34 of the Code of Federal Regulations.

16 (iii) Pupil records obtained pursuant to this subparagraph shall
17 be subject to the evidentiary rules described in Section 701 of the
18 Welfare and Institutions Code.

19 (J) A judge or probation officer for the purpose of conducting
20 a truancy mediation program for a pupil, or for purposes of
21 presenting evidence in a truancy petition pursuant to Section 681
22 of the Welfare and Institutions Code. The judge or probation officer
23 shall certify in writing to the school district that the information
24 will be used only for truancy purposes. A school district releasing
25 pupil information to a judge or probation officer pursuant to this
26 subparagraph shall inform, or provide written notification to, the
27 parent or guardian of the pupil within 24 hours of the release of
28 the information.

29 (K) A county placing agency when acting as an authorized
30 representative of a state or local educational agency pursuant to
31 subparagraph (C). School districts, county offices of education,
32 and county placing agencies may develop cooperative agreements
33 to facilitate confidential access to and exchange of the pupil
34 information by email, facsimile, electronic format, or other secure
35 means, ~~provided if~~ the agreement complies with the requirements
36 set forth in Section 99.35 of Title 34 of the Code of Federal
37 Regulations.

38 (L) (i) An agency caseworker or other representative of a state
39 or local child welfare agency, or tribal organization, as defined in
40 Section 450b of Title 25 of the United States Code, that has legal

1 responsibility, in accordance with state law, for the care and
2 protection of the pupil.

3 (ii) Pupil records obtained pursuant to this subparagraph, or
4 personally identifiable information contained in those records,
5 may be disclosed by the agency or organization specified in clause
6 (i) to an individual or entity who is engaged in addressing the
7 pupil's educational needs and who is authorized by that agency or
8 organization to receive the disclosure. The records, or the
9 personally-identified *identifiable* information contained in those
10 records, shall not otherwise be disclosed by that agency or
11 organization, except as provided under the federal Family
12 Educational Rights and Privacy Act (20 U.S.C. Sec. 1232g) and
13 state law, including paragraph (3).

14 (2) School districts may release information from pupil records
15 to the following:

16 (A) Appropriate persons in connection with an emergency if
17 the knowledge of the information is necessary to protect the health
18 or safety of a pupil or other persons. Schools or school districts
19 releasing information pursuant to this ~~section~~ *subparagraph* shall
20 comply with the requirements set forth in Section 99.32(a)(5) of
21 Title 34 of the Code of Federal Regulations.

22 (B) Agencies or organizations in connection with the application
23 of a pupil for, or receipt of, financial aid. However, information
24 permitting the personal identification of a pupil or his or her parents
25 may be disclosed only as may be necessary for purposes as to
26 determine the eligibility of the pupil for financial aid, to determine
27 the amount of the financial aid, to determine the conditions that
28 will be imposed regarding the financial aid, or to enforce the terms
29 or conditions of the financial aid.

30 (C) Pursuant to Section 99.37 of Title 34 of the Code of Federal
31 Regulations, a county elections official, for the purpose of
32 identifying pupils eligible to register to vote, or for conducting
33 programs to offer pupils an opportunity to register to vote. The
34 information shall not be used for any other purpose or given or
35 transferred to any other person or agency.

36 (D) Accrediting associations in order to carry out their
37 accrediting functions.

38 (E) Organizations conducting studies for, or on behalf of,
39 educational agencies or institutions for the purpose of developing,
40 validating, or administering predictive tests, administering student

1 aid programs, and improving instruction, if the studies are
2 conducted in a manner that will not permit the personal
3 identification of pupils or their parents by persons other than
4 representatives of the organizations, the information will be
5 destroyed when no longer needed for the purpose for which it is
6 obtained, and the organization enters into a written agreement with
7 the educational agency or institution that complies with Section
8 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

9 (F) Officials and employees of private schools or school systems
10 where the pupil is enrolled or intends to enroll, subject to the rights
11 of parents as provided in Section 49068 and in compliance with
12 the requirements in Section 99.34 of Title 34 of the Code of Federal
13 Regulations. This information shall be in addition to the pupil's
14 permanent record transferred pursuant to Section 49068.

15 (G) (i) A contractor or consultant with a legitimate educational
16 interest who has a formal written agreement or contract with the
17 school district regarding the provision of outsourced institutional
18 services or functions by the contractor or consultant.

19 (ii) Notwithstanding Section 99.31(a)(1)(i)(B) of Title 34 of the
20 Code of Federal Regulations, a disclosure pursuant to this
21 ~~paragraph~~ *subparagraph* shall not be permitted to a volunteer or
22 other party.

23 (3) A person, persons, agency, or organization permitted access
24 to pupil records pursuant to this section shall not permit access to
25 any information obtained from those records by another person,
26 persons, agency, or organization, except for allowable exceptions
27 contained within the federal Family Educational Rights and Privacy
28 Act (20 U.S.C. Sec. 1232g) and state law, including this section,
29 and implementing regulations, without the written consent of the
30 pupil's parent. This paragraph ~~does~~ *shall* not require prior parental
31 consent when information obtained pursuant to this section is
32 shared with other persons within the educational institution, agency,
33 or organization obtaining access, so long as those persons have a
34 legitimate educational interest in the information pursuant to
35 Section 99.31(a)(1)(i)(A) of Title 34 of the Code of Federal
36 Regulations.

37 (4) Notwithstanding any other law, a school district, including
38 a county office of education or county superintendent of schools,
39 may participate in an interagency data information system that
40 permits access to a computerized database system within and

1 between governmental agencies or school districts as to information
2 or records that are nonprivileged, and where release is authorized
3 as to the requesting agency under state or federal law or regulation,
4 if each of the following requirements are met:

5 (A) Each agency and school district shall develop security
6 procedures or devices by which unauthorized personnel cannot
7 access data contained in the system.

8 (B) Each agency and school district shall develop procedures
9 or devices to secure privileged or confidential data from
10 unauthorized disclosure.

11 (C) Each school district shall comply with the access log
12 requirements of Section 49064.

13 (D) The right of access granted shall not include the right to
14 add, delete, or alter data without the written permission of the
15 agency holding the data.

16 (E) An agency or school district shall not make public or
17 otherwise release information on an individual contained in the
18 database if the information is protected from disclosure or release
19 as to the requesting agency by state or federal law or regulation.

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

29 (c) (1) ~~Any~~ A person or party who is not permitted access to
30 pupil records pursuant to subdivision (a) or (b) may request access
31 to pupil records as provided for in paragraph (2).

32 (2) A local educational agency or other person or party who has
33 received pupil records, or information from pupil records, may
34 release the records or information to a person or party identified
35 in paragraph (1) without the consent of the pupil's parent or
36 guardian pursuant to Section 99.31(b) of Title 34 of the Code of
37 Federal Regulations, if the records or information are deidentified,
38 which requires the removal of all personally identifiable
39 information, ~~provided that~~ if the disclosing local educational agency
40 or other person or party has made a reasonable determination that

1 a pupil's identity is not personally identifiable, whether through
2 single or multiple releases, and has taken into account other
3 pertinent reasonably available information.

4 ~~SEC. 2. Section 49077 of the Education Code is amended to~~
5 ~~read:~~

6 ~~49077. Information concerning a pupil shall be furnished in~~
7 ~~compliance with a court order or a lawfully issued subpoena. The~~
8 ~~school district shall make a reasonable effort to notify the parent~~
9 ~~or legal guardian and the pupil in advance of compliance with a~~
10 ~~lawfully issued subpoena and, in the case of compliance with a~~
11 ~~court order, if lawfully possible within the requirements of the~~
12 ~~order, except that additional notice by the school district to the~~
13 ~~parent or legal guardian is not required when the parent or legal~~
14 ~~guardian is a party to a court proceeding involving child abuse and~~
15 ~~neglect, as defined in Section 3 of the federal Child Abuse~~
16 ~~Prevention and Treatment Act (42 U.S.C. Sec. 5101 notes) or~~
17 ~~dependency matter and the order is issued in the context of that~~
18 ~~proceeding.~~