

AMENDED IN SENATE JUNE 19, 2013

AMENDED IN ASSEMBLY MAY 7, 2013

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 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 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:

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

6 (1) Access to those particular records relevant to the legitimate
7 educational interests of the requester shall be permitted to the
8 following:

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

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

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

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

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

39 (F) A pupil 16 years of age or older or having completed the
40 10th-grade who requests access: *grade*.

1 (G) A district attorney who is participating in or conducting a
2 truancy mediation program pursuant to Section 48263.5, or Section
3 601.3 of the Welfare and Institutions Code, or participating in the
4 presentation of evidence in a truancy petition pursuant to Section
5 681 of the Welfare and Institutions Code.

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

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

15 (ii) For purposes of this subparagraph, a probation officer,
16 district attorney, and counsel of record for a minor shall be deemed
17 to be local officials for purposes of Section 99.31(a)(5)(i) of Title
18 34 of the Code of Federal Regulations.

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

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

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

1 (L) (i) An agency caseworker or other representative of a state
2 or local child welfare agency, or tribal organization, as defined in
3 Section 450b of Title 25 of the United States Code, that has legal
4 responsibility, in accordance with state or tribal law, for the care
5 and protection of the pupil.

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

23 (2) School districts may release information from pupil records
24 to the following:

25 (A) Appropriate persons in connection with an emergency if
26 the knowledge of the information is necessary to protect the health
27 or safety of a pupil or other persons. Schools or school districts
28 releasing information pursuant to this subparagraph shall comply
29 with the requirements set forth in Section 99.32(a)(5) of Title 34
30 of the Code of Federal Regulations.

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

39 (C) Pursuant to Section 99.37 of Title 34 of the Code of Federal
40 Regulations, a county elections official, for the purpose of

1 identifying pupils eligible to register to vote, or for conducting
2 programs to offer pupils an opportunity to register to vote. The
3 information shall not be used for any other purpose or given or
4 transferred to any other person or agency.

5 (D) Accrediting associations in order to carry out their
6 accrediting functions.

7 (E) Organizations conducting studies for, or on behalf of,
8 educational agencies or institutions for the purpose of developing,
9 validating, or administering predictive tests, administering student
10 aid programs, and improving instruction, if the studies are
11 conducted in a manner that will not permit the personal
12 identification of pupils or their parents by persons other than
13 representatives of the organizations, the information will be
14 destroyed when no longer needed for the purpose for which it is
15 obtained, and the organization enters into a written agreement with
16 the educational agency or institution that complies with Section
17 99.31(a)(6) of Title 34 of the Code of Federal Regulations.

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

24 (G) (i) A contractor or consultant with a legitimate educational
25 interest who has a formal written agreement or contract with the
26 school district regarding the provision of outsourced institutional
27 services or functions by the contractor or consultant.

28 (ii) Notwithstanding Section 99.31(a)(1)(i)(B) of Title 34 of the
29 Code of Federal Regulations, a disclosure pursuant to this
30 subparagraph shall not be permitted to a volunteer or other party.

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

1 or organization obtaining access, so long as those persons have a
2 legitimate educational interest in the information pursuant to
3 Section 99.31(a)(1)(i)(A) of Title 34 of the Code of Federal
4 Regulations.

5 (4) Notwithstanding any other law, a school district, including
6 a county office of education or county superintendent of schools,
7 may participate in an interagency data information system that
8 permits access to a computerized database system within and
9 between governmental agencies or school districts as to information
10 or records that are nonprivileged, and where release is authorized
11 as to the requesting agency under state or federal law or regulation,
12 if each of the following requirements are met:

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

16 (B) Each agency and school district shall develop procedures
17 or devices to secure privileged or confidential data from
18 unauthorized disclosure.

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

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

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

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

37 (c) (1) A person or party who is not permitted access to pupil
38 records pursuant to subdivision (a) or (b) may request access to
39 pupil records as provided for in paragraph (2).

1 (2) A local educational agency or other person or party who has
2 received pupil records, or information from pupil records, may
3 release the records or information to a person or party identified
4 in paragraph (1) without the consent of the pupil's parent or
5 guardian pursuant to Section 99.31(b) of Title 34 of the Code of
6 Federal Regulations, if the records or information are deidentified,
7 which requires the removal of all personally identifiable
8 information, if the disclosing local educational agency or other
9 person or party has made a reasonable determination that a pupil's
10 identity is not personally identifiable, whether through single or
11 multiple releases, and has taken into account other pertinent
12 reasonably available information.

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