

Board Office Use: Legislative File Info.	
File ID Number	15-0850
Introduction Date	5-27-15
Enactment Number	
Enactment Date	



OAKLAND UNIFIED
SCHOOL DISTRICT

Community Schools, Thriving Students

Memo

To Board of Education
 From Jacqueline Minor, General Counsel
 Board Meeting Date May 27, 2015
 Subject Amendments to Board Policy BP 5125

Action Requested Approval by the Board of Education of modifications in Board Policies 5125

Background Staff is recommending approval of changes in Board Policy 5125 to make clear that consent is required prior to disclosure of student records, unless there is a legally permissible exception permitting disclosure. The related administrative regulations will also be amended to clarify that student disciplinary records shall not be forwarded to a college or university without consent. Additional changes to the BP are recommended by the California School Boards Association (CSBA) to conform to changes in state law and permit the District to enter into contracts for electronic storage of student records under certain circumstances.

Discussion The changes in the Board Policy conform to changes in State law and the Board's commitment to confidentiality of student records. As colleges and universities increase standard inquiries relating to student disciplinary records, the Board Policy and associated Administrative Regulations are intended to clarify that consent is required for such disclosures. The proposed changes are based upon the California School Board Association's recommended model and have been reviewed by the Office of the General Counsel.

Recommendation Approval by the Board of Education of modifications in Board Policy 5125.

Fiscal Impact N/A

Attachments

- Redline of Board Policy 5125
- Proposed Board Policy 5125

Oakland Unified School District

Board Policy

BP 5125

Student Records

The Governing Board recognizes the importance of keeping accurate, comprehensive student records as required by law. The Superintendent or designee shall ensure that the district's administrative regulation and school site procedures for maintaining the confidentiality of student records are consistent with state and federal law.

The Superintendent or designee shall establish administrative regulations governing the identification, retention, and security of student records. These regulations shall ensure the rights of authorized persons to have timely access to student records and shall protect students and their families from invasion of privacy. Unless permitted by law, student records shall not be disclosed without the consent of the parent or guardian of a minor student or the student's consent if the student is not a minor.

(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)

Student Records from Social Media

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

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

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

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:
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
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
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>

8/25/04; revised 5/27/15

Oakland Unified School District

Board Policy

BP 5125

Student Records

The Governing Board recognizes the importance of keeping accurate, comprehensive student records as required by law. ~~Procedures~~ The Superintendent or designee shall ensure that the district's administrative regulation and school site procedures for maintaining the confidentiality of student records shall be consistent with state and federal law.

The Superintendent or designee shall establish administrative regulations governing the identification, description, retention, and security of student records, as well as timely access for authorized persons. These regulations shall ensure parentalthe rights of authorized persons to review, inspect and copy have timely access to student records and shall protect the studentsstudents and the student's familytheir families from invasion of privacy. Unless permitted by law, student records shall not be disclosed without the consent of the parent or guardian of a minor student or the student's consent if the student is not a minor.

(cf. 3580 - District Records)

(cf. 4040 - Employee Use of Technology)

(cf. 5125.1 - Release of Directory Information)

(cf. 5125.2 - Withholding Grades, Diploma or Transcripts)

(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 designeeemployee 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)

Student Records from Social Media

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, as added by AB 1584 (Ch. 800, Statutes of 2014), 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

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 of pupils causing property damage or injury; transfer of pupils to new school districts; notice to rescind decision to withhold~~

48918 Rules governing expulsion procedures

48980 Parental notifications

48985 Notices in parent/guardian's primary language

49060-49079 ~~Pupil~~ 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

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 ~~pupil~~ 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

300.500—Definition of "personally identifiable"

300.501 Opportunity to examine records for parents of student with disability

300.573—Destruction of information

COURT DECISIONS

Falvo v. Owasso Independent School District, 220 F.3d. 1200 (10th Cir. 2000)

Management Resources:

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

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

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 Office: <http://www.ed.gov/offices/OMpolicy/gen/guid/fpco/>

8/25/04

(11/00 3/09) 12/14