

### BASIS FOR OPERATION

The administrative value of most agency records generally decreases rapidly when related transactions are completed. Some of these records should be destroyed when their usefulness has ended or when they are no longer needed for their intended purpose. Other records have continuing legal, fiscal, or historical value for years after their administrative value is exhausted. Other specific records shall be permanently retained by districts according to state regulations.

A procedure for record management is essential for the efficient administration of each district. All record keeping systems whether paper, microform, or electronically based, should provide information easily when needed. This includes records retained in accordance with legal requirements as well as records retained as “necessary and convenient” to a district’s business.

Districts should train all employees about records management to ensure that those with authorized access handle records correctly and to protect information as it is being collected, used, or stored. Districts should identify and designate as custodians of records those employees primarily responsible for responding to records requests and train them on the requirements of law, regulations, and district policy.

A procedure for management of diversified records prepared by school and community college districts maximizes the usefulness of the records needed for administration. The following objectives for a records management program, including electronic records, are suggested by the *State Administrative Manual*, Chapter 1600, Records Management, and the Department of General Services *Records Retention Handbook* and *Electronic Records Management Handbook* (see Additional Resources). They are intended to control the creation, utilization, maintenance, retention, preservation, security, and disposal of records:

1. Improve administration through efficient correspondence management. This includes forms, reports, and file operations.
2. Streamline systems and procedures.
3. Transfer inactive records from high-cost office space or electronic media to low-cost storage space.
4. Destroy records that are not required to be kept as a matter of law and are no longer of significant value for administrative, legal, fiscal, historical, or research purposes promptly upon expiration of the appropriate retention period.

5. Ensure the preservation of records with long-term or permanent value.

Records disposition is the term used to encompass objectives three and four of a total records management program. Records disposition is defined as the systematic transfer of records no longer needed for everyday operations from office space and electronic records systems to storage and long-term stable storage media.

Records disposition includes the destruction of records that no longer have any significant value. The systematic transfer of records from office space to storage to destruction accommodates the storage needs for records produced during the current school year. This includes the migration or disposal of electronic records to free up valuable and needed computer resources. Purchase of additional equipment and supplies for record storage is minimized along with the amount of floor space or media that must be set aside for record storage purposes. Employee time is not wasted maintaining inactive or obsolete records longer than necessary.

The following material is compiled as a reference to assist school districts and community college districts in keeping a records disposition procedure. This is a basis for their total records management program, including electronic records. The material focuses upon the state requirements for record retention, transfer, and destruction. Districts that require specific federal records retention information should contact the appropriate federal agency for assistance. The U.S. Department of Education General Administrative Regulations (EDGAR) related to records retention for grant funds are presented in section 80.42 (b)(4) of the Code of Federal Regulations, Title 34 (see Additional Resources).

## DEFINITIONS OF RECORDS

### Local Agencies

Public records include any writing containing information that relates to the conduct of the public's business, prepared, owned, used or retained by any local agency regardless of physical form or characteristics. Every employment contract between a local agency and any public official or public employee is a public record. [GC §§ 6252(e), 6254.3, 6254.8]

Writing is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." [GC § 6252(g)]

### School Districts

Records are defined as meaning all records, maps, books, papers, and documents of a school district required by law to be prepared or retained. They may be prepared or retained as necessary or convenient to the discharge of official duty. [5 CCR §16020]

Pupil records, other than directory information, are defined as any item of information directly related to an identifiable pupil that is maintained by a school district for the purpose of second party review, whether recorded by handwriting, print, tapes, film, microfilm or other means. Informal notes that remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute are not pupil records. [EC §§ 49061(b), 56515; 5 CCR § 430]

### Community College Districts

Records are defined as all records, maps, books, papers, data processing output, and electronic documents of the community college district required legally to be prepared or retained. This includes documents prepared or retained as necessary or convenient to the discharge of official duty. It includes student records and personally identifiable student-related information. The documents listed under Title 5, California Code of Regulations section 59020(b) are not records and may be destroyed at any time. [5 CCR § 59020]

Student records, other than directory information, are defined in part as any items of information directly related to an identifiable student. This includes information maintained by a community college or required to be kept by an employee in the performance of the employee's duties. This applies whether it is recorded by hand, print, tapes, film, microfilm, or other means. (Refer to specific subsections for exceptions). [EC § 76210; 5 CCR § 54606(c)]

## ACCESS TO RECORDS

Section 3 of Article I of the California Constitution grants any person the right to access information concerning meetings and writings of state and local government bodies, officials, and agencies as long as the constitutional rights of privacy and due process are protected. The public has a constitutional right to public information, and courts are required to broadly interpret rules or laws granting access and to narrowly interpret those denying access; thus, the burden is on the district to demonstrate the need for restriction. [CalC Art. I, § 3]

### Local Agencies

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in the state. Court decisions have supported the concept of freedom of information and public access to information in the possession of public agencies. The California Public Records Act (CPRA) was intended to provide access to governmental records while protecting the individual's right to privacy. The Act was intended to ensure that an individual could have access to and receive copies of documents. An agency may not delay or obstruct the inspection or copying of records. [GC § 6250 et seq.]

Public records are open to inspection at all times during the office hours of the local agency. Every person has a right to inspect any public record not specifically exempted by provisions of the California Public Records Act. An agency may adopt regulations stating the procedure for making its records accessible to the public. [GC §§ 6253, 6253.4, 54957.5]

A person may receive a copy of any identifiable public record upon payment of fees for direct costs of duplication or applicable statutory fee. No surcharge shall be imposed on persons with disabilities for copies of agenda materials in alternative formats. The exact copy shall be made unless impracticable to do so. Within 10 days after receipt of any request for a copy of records, the agency shall determine whether to comply with the request and shall immediately notify the requester of the determination and reasons and the estimated date and time when the records will be made available. The time limit may be extended by written notice for specified reasons no more than 14 days. A denial of a request for inspection or copies of public records shall be in writing and include the name(s) and title(s) of person(s) responsible for the denial. [GC §§ 6253, 6253.1, 6253.9, 6255, 54957.5]

To the extent reasonable under the circumstances, the agency shall assist a member of the public to make a focused, effective request that reasonably describes an identifiable record or records. The agency shall make a reasonable effort to elicit additional clarifying information from the requester that will help identify the record(s), if necessary, and shall provide suggestions for overcoming any practical basis for denying access to the records or information sought. The agency shall describe the information technology and physical location in which the identified public records exist. [GC § 6253.1]

A person may institute court proceedings to enforce the right to inspect or receive a copy of any public or class of public records under the California Public Records Act. The court shall award court costs and reasonable attorney fees to the plaintiff should the plaintiff prevail in litigation filed. Such costs and fees shall be paid by the public agency that improperly withheld the records. [GC §§ 6258-9]

An elected officer of a local agency may access public records of that agency on the same basis as any other person. This does not limit the ability of elected officers to access public records permitted by law in the administration of their duties. [GC § 6252.5]

#### Exemption of Particular Records from Disclosure

An agency must justify withholding any record by demonstrating that the record is exempt under express provisions of the California Public Records Act, or the “catch-all” exemption of Government Code section 6255(a). The Court of Appeal determined that a claim that disclosure of particular information violates an individual’s constitutional right to privacy is analyzed using the same balancing test that is applied in evaluating “catch-all” exemptions. The public agency is permitted to avoid disclosure if, on the facts of the particular case, it can show the public interest served by nondisclosure clearly outweighs the public interest served by disclosure of the record. [GC § 6255(a)]

The following records are exempt from disclosure:

1. Preliminary drafts, notes, or inter-agency or intra-agency memorandums that are not retained by the public agency in the ordinary course of business. This is provided that the public interest in withholding such records clearly outweighs the public interest in disclosure. [GC § 6254(a)]
2. Records pertaining to pending litigation to which the public agency is a party or to specified claims until such litigation or claim has been finally adjudicated or otherwise settled. [GC § 6254(b)]
3. Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy. [GC § 6254(c)]
4. Social Security numbers. [CC § 1798.85; GC § 6254.29]
5. Test questions, scoring keys, and other examination(s) used to administer a licensing examination, examination for employment, or academic examination. [EC § 99150 et seq.; GC § 6254(g)]

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6. The contents of real estate appraisals engineering or feasibility estimates and evaluations made for or by the local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until such times as all of the property has been acquired or all of the contract agreement obtained. [GC § 6254(h)]
  7. Records the disclosure of which are exempted or prohibited according to provisions of federal or state law. This includes, but is not limited to, provisions of the Evidence Code relating to privilege. [GC § 6254(k)]
  8. A document prepared for distribution or consideration in closed session that assesses vulnerability to terrorist attack or criminal acts to disrupt operations. [GC § 6254(aa)]
  9. Petitions for school district reorganization or for filling governing board vacancies. [GC § 6253.5]
  10. All registration and circulation records of any library supported by public funds. This includes any information the library requires of a patron to be eligible to borrow books and materials or information that identifies the borrower of books and materials. [GC § 6267]
  11. Questionnaire responses of prospective bidders and their financial statements. [PCC §§ 20111.5(a), 20651.5(a)]
  12. Other records exempt from disclosure are specified in sections of the California Public Records Act. [GC §§ 6254, 6254.5, 6254.7, 6254.28, 6253.29, 6275 et seq.]

The minute book of closed sessions of the governing board is not a public record subject to disclosure according to the California Public Records Act and shall be kept confidential. [GC § 54957.2]

The California Public Records Act does not require the disclosure of memoranda submitted to the governing board by its legal counsel pursuant to Government Code section 54956.9 until the pending litigation has been finally adjudicated or otherwise settled. [GC § 6254(b)]

The changed name, residential street address, work address, or school address of participants in the Secretary of State's *Safe at Home* program for victims of domestic violence, sexual assault, or stalking is not a public record subject to disclosure and shall be kept confidential by the local agency. [GC § 6205-11]

Courts have determined that exempt material must not be disclosed to any member of the public if the material is to remain exempt from disclosure. If a record contains exempt material, the exempt material may be withheld but the nonexempt information must be disclosed unless the remainder after redaction would be of little or no value to the requester.

#### Subpoena or Court Order for Records

A lawfully issued subpoena duces tecum ("subpoena") or a court order may be served on a school or community college district officer or employee requiring the production of certain records. The exact records to be produced must be specified in the affidavit or declaration served with the subpoena. Copies shall be in the form of photostat, microfilm, microcard, or other photographic copy or reproduction. In no event may the custodian of records mail or give copies of these records to any party or any party's attorney. Contact legal counsel for procedures for responding to civil subpoenas. [EC §§ 49077-8, 76244-5]

#### School District, Pupil Records

The provisions of the Education Code shall prevail over the provisions of the California Public Records Act to the extent that they may pertain to access to pupil records. Access to pupil records shall be in accordance with Education Code sections to ensure the confidentiality of the records. The procedure for access to pupil records is specified in the California Code of Regulations. [EC §§ 49060 et seq., 56504, 56515; FC § 3025, 3151(c)(5); 5 CCR § 435]

The Family Educational Rights and Privacy Act (FERPA) protects the privacy of student education records. FERPA applies to all schools that receive funds under applicable programs of the U.S. Department of Education. [20 USC § 1232g, 34 CFR, pt. 99] Failure to comply with FERPA's disclosure and recordation provisions could subject the district to loss of federal funds.

A parent's FERPA rights of access to, or control of, student records may be revoked by a court order, state statute, or other legally binding document that specifically prohibits access to education records or removes the parent's right to have knowledge about his/her child's education.

Parents or legal guardians or pupils who have attained the age of 18 or are attending an institution of postsecondary instruction may request copies of all pupil records or to inspect and review records during regular school hours. District procedures for granting requests must provide that access is granted no later than five business days following the date of the request. [EC §§ 49061, 49065, 49069, 56504; FC § 3025]

The grades, diploma, or transcripts of a pupil may be withheld from a pupil and his/her parent or guardian under specified conditions after affording the pupil due process rights. The school district to which a pupil transfers shall also withhold these pupil records until the decision to withhold is rescinded. [EC §§ 48904-5]

No public release of information regarding pupil participation in any free or reduced-price meal program is permitted. [EC §§ 49557.1-7.2, 49558] (See also Child Nutrition.)

Districts should not release student expulsion records to a third party without clear legal authority. The Court of Appeal of the State of California (2002) ruled that FERPA, which protects students and their parents from disclosure of student records, preempts Education Code section 48918, which requires public disclosure of expulsion records. [34 CFR, pt. 99; EC § 48918(k)]

Upon request, districts disclose education records without consent to officials of another agency or institution in which the student seeks or intends to enroll. FERPA requires a district to make a reasonable attempt to notify the parent or student of the records request unless it states in its annual notification that it intends to forward education records on request. [34 CFR §§ 99.7, 99.34]

Section 9528 of the No Child Left Behind Act requires disclosure of high school students' names, addresses, and telephone numbers to military recruiters or institutions of higher education, unless a parent has "opted out" of providing this information to third parties (see Additional Resources). [20 USC § 7908]

### Community College Districts, Student Records

Access to student records shall be in accordance with the Education Code sections. The procedure for access to student records is specified in the California Code of Regulations. [EC §§ 76210(c), 76230-1, 76242-5; 5 CCR §§ 54610-26, 59023(d)]

The Family Educational Rights and Privacy Act (FERPA) provides authority to protect student personal information from unauthorized disclosure. [34 CFR, Pt. 99] FERPA affords parents and students over 18 years of age certain rights with respect to the student's education records. [20 USC § 1232g; 26 USC § 152]

### Employee Records

Personnel files are confidential and not required to be disclosed under the CPRA. The right of employees to inspect personnel records is a fundamental right of employment and an issue of statewide concern. Every employee has the right to inspect personnel

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records pursuant to LC §1198.5. An employee may examine and receive a copy at cost of all materials in his/her personnel file except records relating to the investigation of a possible criminal offense, letters of reference, or ratings, reports, or records that were:

1. Obtained prior to the employee's employment.
2. Prepared by identifiable examination committee members.
3. Obtained in connection with a promotional examination.

A noncredentialed employee shall have access to his/her numerical scores obtained from written examinations. [EC §§ 44031, 87031; GC §§ 6254(c), 6254.3; LC § 1198.5]

#### PENALTIES FOR CRIMES RELATING TO PUBLIC RECORDS

It is a crime punishable by imprisonment for any officer having the custody of any record filed or deposited in any public office, or other person not an officer, to willfully destroy or permit to be destroyed the whole or any part of such record. In order for a record to be protected under the Government Code, it must qualify as a public record. Both confidential public records and public records open for inspection are entitled to protection under this statute. [GC §§ 6200-1]

An officer who destroys records of a district in accordance with the provisions of Title 5 of the California Code of Regulations does not violate these Government Code sections.

A person who knowingly and willfully destroys or conceals any book, paper, record, instrument in writing, or other matter or thing, with intent to prevent it from being produced in evidence in any trial, inquiry, or investigation, is guilty of a misdemeanor. [PC § 135]

A credential holder who uses school records of pupil data to recruit a pupil as a customer of a business owned by the credential holder or in which the credential holder is employed may be subject to suspension or revocation of his/her credential. [EC § 44421.1]

The unlawful interception, use, or disclosure of a wire, electronic, or oral communication is punishable under the federal Electronic Communications Privacy Act. [18 USC § 2511]

## RETENTION, TRANSFER, AND DESTRUCTION OF RECORDS

Whenever the destruction of records of a district is not otherwise authorized or provided for by law, the governing board of the district may destroy such records in accordance with the regulations of the Superintendent of Public Instruction. District records shall be retained, transferred, or destroyed only as provided in the California Code of Regulations. [EC § 35253; 5 CCR § 16020 et seq.]

Community college districts may destroy records in accordance with the regulations of the Board of Governors of the California Community Colleges. The provisions of the California Code of Regulations shall apply only in the event that the destruction or retention of records by the community college district is not otherwise authorized or provided by law. [5 CCR § 59020 et seq.]

### Classification of Records – School Districts [5 CCR § 16022]

#### 1. Prior Year Records

Before January 1, the district superintendent (or a person designated in the minutes of a district not employing a superintendent) shall review documents and papers originating during the prior school year and classify them as Class 1–Permanent, Class 2–Optional, or Class 3–Disposable.

#### 2. Continuing Records

Records of a continuing nature, i.e., active and useful for administrative, legal, fiscal, or other purposes over a period of years, shall not be classified until such usefulness has ceased. A pupil's cumulative record, if not transferred, is a continuing record until the pupil ceases to be enrolled in the district.

#### 3. Photographic, Microfilm, or Electronic Copy

The governing board of any school district may make photographic, microfilm, or electronic copies of any records of the district. The original of any records of which a photographic, microfilm, or electronic copy has been made may be destroyed when provision is made for permanently maintaining the photographic, microfilm or electronic copies in the files of the district, except that no original record that is basic to any required audit shall be destroyed prior to the second July 1<sup>st</sup> succeeding the completion of the audit. [EC § 35254]

Whenever an original record is photographed, micro photographed, or otherwise reproduced on film, the copy thus made is classified as Class 1–Permanent. The original record, unless classified as Class 2–Optional, may be classified as Class 3–Disposable. It may then be destroyed in accordance with the California Code of Regulations if the following conditions have been met:

- a. The reproduction was accurate in detail and on film of the type approved for permanent, photographic records by the United States Bureau of Standards.
- b. The superintendent has attached to or incorporated in the microfilm copy a signed and dated certification of compliance with the provisions of the Evidence Code (Exhibits 1 and 2). [EvC § 1531]
- c. The microfilm copy was placed in an accessible location, and provision was made for preserving permanently, examining and using the same.

#### 4. Historical Inventory of Equipment

An historical inventory of equipment shall be subject to classification for retention when the inventory is superseded or when the equipment is removed from district ownership. Otherwise, it shall be a continuing record.

#### Classification of Records – Community College Districts [5 CCR § 59022]

##### 1. Prior Year Records

Each community college district shall establish an annual procedure by which the chief administrative officer, or the designee of that officer, shall review documents and papers received or produced during the prior academic year and classify them as Class 1–Permanent, Class 2–Optional, or Class 3–Disposable.

##### 2. Records Not Classified Before July 1, 1976

All records not classified prior to July 1, 1976, are subject to the same review and classification as in 1. If such records are three or more years old and classified as Class 3–Disposable, they may be destroyed without further delay, but in accordance with procedures for destruction.

##### 3. Current Year Records

Records originating during a current academic year shall not be classified during that year.

#### 4. Continuing Records

Records of a continuing nature, i.e., active and useful for administrative, legal, fiscal, or other purposes over a period of years, shall not be classified until such usefulness has ceased.

#### 5. Copy or Reproduction

Whenever an original Class 1–Permanent record is photographed, micro photographed, or otherwise reproduced on film or electronically, the copy made is classified as Class 1–Permanent. The original record, unless classified as Class 2–Optional, may be classified as Class 3–Disposable. It may then be destroyed in accordance with the California Code of Regulations if the following conditions have been met:

- a. The reproduction was accurate in detail.
- b. The chief administrative officer, or the designee of that officer, has attached to or incorporated in the microfilm copy or system, a signed and dated certification of compliance with the provisions of Evidence Code (Exhibits 1 and 2). [EvC § 1531]
- c. The copy was placed in an accessible location, and provision was made for preserving permanently, examining and using the same.
- d. If the record is photographed or microfilmed, it must be on film of a type approved for permanent, photographic records by the United States Bureau of Standards.

#### Period of Retention of Records – School Districts

##### 1. Class 1–Permanent Records [5 CCR § 16023]

The original of each of the types of records listed below or one exact copy, when the original is required by law to be filed with another agency, is a Class 1–Permanent record. It shall be retained indefinitely, unless microfilmed. Refer to the California Code of Regulations for the specific records included as permanent records in addition to the following:

- a. Annual reports.
- b. Official actions.

c. Personnel records for employees and pupils.

d. Property records.

2. Class 2–Optional Records [5 CCR § 16024]

Any record worthy of further preservation but not classified as Class 1–Permanent, may be classified as Class 2–Optional. It shall then be retained until reclassified as Class 3–Disposable. If the superintendent and governing board agree that classification should not be made before January 1, all records of the prior year may be classified as Class 2–Optional, pending further review and classification within one year.

3. Class 3–Disposable Records

All records not classified as a Class 1–Permanent or Class 2–Optional, shall be classified as Class 3–Disposable. This includes, but is not limited to detail records relating to records basic to audit and periodic reports as defined. [5 CCR § 16025]

A Class 3–Disposable record shall not be destroyed until after the third July 1 succeeding the completion of the audit required by the Education Code or of any other legally required audit, or after the ending date of any retention period required by any agency other than the State of California, whichever date is later. [5 CCR § 16026]

A continuing record shall not be destroyed until after the fourth year after it has been classified as Class 3–Disposable. [5 CCR § 16026]

Unless otherwise specified, all Class 3–Disposable records shall be destroyed during the third school year after the school year in which they originated (e.g., 2007-08 records shall be destroyed after July 1, 2011). [5 CCR § 16027]

4. Retention and Destruction of Pupil Records [5 CCR §§ 430, 432, 437, 16023]

No additions except routine updating shall be made to the record of enrollment and scholarship after high school graduation or permanent departure without the prior consent of the parent or adult pupil.

Mandatory permanent pupil records shall be preserved in perpetuity by all California schools as Class 1–Permanent records.

Unless forwarded to another district, mandatory interim pupil records may be adjudged to be disposable when the student leaves the district or when their usefulness ceases. Special education records should be retained for a minimum of two years after the student reaches the age of 22 years. Destruction shall be in accordance with provisions of Class 3–Disposable records during the third school year following such classification.

All records pertaining to any accident or injury involving a minor for which a claim has been filed by law cease to be Class 1—Permanent records one year after the claim has been settled or the statute of limitations has run.

Permitted pupil records may be destroyed when their usefulness ceases. They may be destroyed after six months following the pupil's completion or withdrawal from the educational program.

The method of destruction shall assure that records are not available to possible public inspection in the process of destruction.

#### Period of Retention of Records – Community College Districts

##### 1. Class 1–Permanent Records

The original of each of the types of records listed below or one exact copy, when the original is required by law to be filed with another agency, is a Class 1–Permanent record. It shall be retained indefinitely, unless copied or reproduced in accordance with 5 CCR § 59022. Refer to the California Code of Regulations for the specific records included as permanent records. [5 CCR § 59023]

- a. Annual reports.
- b. Official actions.
- c. Personnel records of employees.
- d. Student records.
- e. Property records.

## 2. Class 2–Optional Records

Any record worthy of further preservation but not classified as Class 1–Permanent, may be classified as Class 2–Optional. It shall then be retained until reclassified as Class 3–Disposable. If the chief executive officer, or other designee, determines that classification should not be made annually, all records of the prior year may be classified as Class 2–Optional, pending further review and classification within one year. [5 CCR § 59024]

## 3. Class 3–Disposable Records

All records, other than continuing records not classified as Class 1–Permanent or Class 2–Optional, shall be classified as Class 3–Disposable. This includes, but is not limited to, detail records basic to audit and periodic reports as defined. [5 CCR § 59025]

Generally, a Class 3–Disposable record, unless otherwise specified, should be destroyed during the third college year after the college year in which it originated (e.g., 2007-08 records should be destroyed after July 1, 2011). [5 CCR § 59026]

A Class 3–Disposable record shall not be destroyed until after the third July 1 succeeding the completion of the audit required by the Education Code or of any other legally required audit. This also applies after the ending date of any retention period required by any agency other than the State of California, whichever date is later. [5 CCR § 59026]

A continuing record shall not be destroyed until the third year after it has been classified as Class 3–Disposable. [5 CCR § 59026]

## 4. Retention and Destruction of Student Records

The retention and destruction of student records, where not otherwise specifically provided for in the Education Code, shall be in accordance with regulations of the Board of Governors, which appear in the California Code of Regulations. [5 CCR §§ 54608, 59020 et seq.]

### Statute of Limitations

In addition to periods of retention required by the State Superintendent of Instruction or board of governors, a district may desire for its own benefit to maintain some records at least beyond the statutory period for bringing suits upon these records.

If a district has any particular inquiry in placing any records in the proper classifications, the doubt should be resolved in favor of the longer retention period.

1. Purchase Orders, Written Contracts

Any purchase orders, contracts or other documents of this type should be retained for at least five years from the date last performance becomes due. This is done because any contract in writing may be the subject of a suit within four years after final performance of any act under the contract becomes due. [CCP § 337]

2. Financial Records

Any records involving financial transactions for which a public officer would become liable for malfeasance or misfeasance of duty should be retained for a period of at least four years. [PC § 799 et seq.]

This applies unless otherwise required inasmuch as any criminal action may be brought against such person for up to three years after the act occurred. Financial records that might be the basis for an action for embezzlement should be retained as permanent records inasmuch as there is no limitation for bringing an action against an officer for such an act. [PC § 799]

Transfer of Records – School Districts

1. Cumulative Records

When a pupil transfers to another school district or to a private school, a copy of the pupil's Mandatory Permanent Pupil Record shall be transferred upon request from the other district or private school. The original or a copy must also be retained permanently by the sending district. If the transfer is to another California public school, the pupil's entire Mandatory Interim Pupil Record shall be forwarded. If the transfer is out-of-state or to a private school, the Mandatory Interim Pupil Record may be forwarded, as well as other permitted pupil records. All pupil records shall be updated prior to such transfer. [EC §§ 49068, 49069.5; 5 CCR § 438]

The California Code of Regulations defines the types of records that shall be transferred or that may be forwarded at the discretion of the district custodian of records. [5 CCR § 432(b)]

Federal law protects the confidentiality of personally identifiable information about individuals with exceptional needs. Parental consent, or the consent of an eligible student who has reached the age of 18 years, may be required before personally identifiable information or education records are released or disclosed. [EC § 56515]

Pupil records shall not be withheld from the requesting district because of any charges owed by the pupil or the parents. This provision applies to pupils in grades K-12 in both public and private schools. [EC §§ 48904, 48904.3; 5 CCR § 438]

Parents shall be notified of the records transfer in accordance with the Education Code and California Code of Regulations requirements.

2. Records of Enrollment and Scholarship

Records specified may be transferred to the office of the principal of any new school upon the discontinuance of a school or to the central office of the district. [EC § 35562; 5 CCR § 433]

3. Preschool Records

A state-funded preschool or infant and toddler program, early education program or Head Start program may transfer information from the previous year deemed beneficial to the pupil and the public school teacher to the pupil's elementary school with the permission of the parent of guardian. Such information includes, but is not limited to, development issues, social interaction abilities, health background, and diagnostic assessments. [EC §§ 8282, 58930]

4. Charter Schools

Section 5208 of the No Child Left Behind Act requires local educational agencies to ensure that student records are transferred between a charter school and another public school upon transfer of the student in accordance with state law (see Additional Resources). [20 USC § 7221]

Transfer of Records – Community College Districts, Student Records

Whenever a student transfers from one community college or public or private institution of postsecondary education to another within the state, appropriate records or a copy shall be transferred by the former community college or university or college upon

request from the student. The student may be notified that records will be transferred upon payment by the student of all fees and charges due the community college, university or college. [EC § 76225]

The community college making a records transfer shall notify the student of his/her rights to receive a copy of the record and to a hearing to challenge the record content in accordance with the Education Code requirements.

#### Destruction of Records – School Districts

The steps in destruction of records including superintendent and board actions are not specified in the California Code of Regulations. The district should develop its own steps in destruction to facilitate the orderly removal of Class 3–Disposable records after the expiration of the established retention periods.

#### Destruction of Records – Community College Districts

The chief administrative officer, or the designee of that officer, shall: [5 CCR § 59027]

1. Personally supervise the classification of records.
2. Mark each file or other container as to classification and the school year in which the records originated. If the records are classified as Class 3–Disposable, the chief administrative officer shall also mark the year in which such records are to be destroyed.
3. Supervise the destruction of records.
4. Submit to the governing board a list of records recommended for destruction with certification that no records are included in the list in conflict with the regulations in the California Code of Regulations.

The governing board shall: [5 CCR § 59028]

1. Approve or disapprove the recommendation of its designee.
2. Order a reclassification when necessary or desirable.
3. Order by action recorded in the minutes (with lists attached) the destruction of records in accordance with these regulations.

Records ordered for destruction shall be permanently destroyed by such foolproof methods as shredding, burning, or pulping supervised by the chief executive officer or other designee. [5 CCR § 59029]

### Litigation Hold

In instances of pending or threatened litigation against the school district, county office of education, or charter school in federal court, the custodian of records is required by law to retain, either in a backup system or in printed form, all documents and records that may be relevant to the lawsuit or reasonably anticipated lawsuit. This is referred to as a "litigation hold." A litigation hold suspends the agency's retention and destruction procedures for certain documents related to the dispute, including electronically stored information such as e-mails and information stored off-site or by third parties.

The custodian of records should consult legal counsel to determine which documents are subject to a litigation hold.

In the event of a litigation hold, the custodian of records shall notify affected employees as soon as possible about the requirements and procedures for retaining relevant documents.

## ELECTRONIC RECORDS

The maintenance of electronic records requires careful management of procedures and equipment to ensure the continuing accuracy, integrity, and availability of the records. The governing board may make electronic copies of any records of the district. [EC § 35254] Electronic technology has greatly expanded the methods of creating, editing, maintaining, transmitting, retrieving, and destroying records. Records can be created on microcomputers, minicomputers, or mainframe computers, regardless of storage media, in networks or stand-alone systems; small computers such as memory typewriters, calculators, mobile phones, e-mail devices, web browsers, and organizers; and embedded systems. Electronic records may be created, manipulated, maintained, and disposed of on the computer without production of hard copy. After a specific period of time, inactive records are transferred to computer-output media for long-term storage, and the original media may be erased and reused.

School districts need to effectively manage and control the record lifecycle and all documents constituting the record regardless of format. Electronic record keeping requires careful application of sound records management principles. Electronic record keeping systems are more vulnerable to undetected alteration, loss, or unauthorized disclosure of information than hard copy or microform systems.

According to California Records and Information Management (CalRIM), “The use of agency Web sites to communicate information to the public may be important records that need to be managed and addressed in records retention schedules. As Web pages and the data that is captured from them become the substitute for paper transactions, retention periods and methodology will need to be applied as with other electronic records” (see Additional Resources).

CalRIM suggests the following principles for determining which computer information is a “record” and which is a “non-record.” Implementation of these principles will depend on the needs of the district and should be reviewed with counsel.

1. An e-mail message with associated information (metadata) and any attachment(s) sent or received is a document. Transmitting by electronic mail or facsimile is a record regardless of the format in which the record has been stored. If the informational content of the electronic mail is used for official business, that particular electronic mail is subject to retention under the CPRA.
2. Voice mail is usually a non-record, unless preserved in a manner that would meet record criteria, as with other records, such as containing information necessary for the district’s business.
3. Word processing files are records if they meet the criteria to be a record.
4. One set of computer data containing accounting and tax information plus one copy of the visible output (e.g., printed report of computer output microfilm) are records under the Internal Revenue Service’s Revenue Procedure 91-59.
5. Computer back-up tapes and other duplicate computer files are non-records.
6. Databases and other data compilations that are used for multiple purposes are often records.
7. Electronic transactions are records.

When computer information is classified as “record” material, it must be retained according to the district’s records retention schedule. A “non-record” generally can be destroyed at the discretion of the user after a short period of time or after the official record is produced.

The California Uniform Electronic Transaction Act places electronic documents and the use of electronic signatures on a par with traditional paper-based transactions and the use of manual signatures. In the area of records retention, electronic records may

replace other methods so long as there is assurance that the electronic records will provide the accuracy, integrity, and accessibility of traditional methods of retention. [CC § 1633.1 et seq.]

### Information Security

Reasonable security for the electronic records created, used, and stored on computer systems is an important issue for records management, particularly if the data is confidential or personal. Key aspects of information security include physical network security, software security, and user access security.

The California Supreme Court recognized that persons have a fundamental protected privacy interest in informational privacy. The district or county office of education should implement and maintain reasonable security procedures and practices appropriate to the nature of the information to protect the personal information about a California resident from unauthorized access, destruction, use, modification, or disclosure. Unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information maintained by the district or county office of education may require immediate notification of the affected persons and action to restore the reasonable integrity of the data system. [CC §1798.82]

CalRIM provides suggestions for hardware and data security, disaster preparedness and recovery, and care of media and transmission systems in its *Electronic Records Management Handbook* (see Additional Resources).

The National Forum on Education Statistics provides suggestions for data security in its *Forum Guide to Protecting the Privacy of Student Information: State and Local Education Agencies* (see Additional Resources). Inappropriate disposal methods expose the district to unnecessary privacy risks from unauthorized users. Electronic records should not simply be erased or media reformatted. The district must ensure the digitally encoded components such as tapes, disks, and hard drives are properly wiped clean of confidential information prior to the sale, lease, or disposal of personal property identified as surplus or not suitable for school use. [EC §§ 17540, 17545 et seq.]

## RECORDS DISPOSITION PROGRAM

### Inventory of all Records (Exhibit 3)

1. Describe the quantity and form of specific district records (i.e., original, copy, paper, microform, or electronically based, etc.).

2. Determine which records are maintained in office space and which are located in storage facilities or electronic media.
3. Determine how frequently each record is used and who needs access to each specific record.
4. Specify the classification of each record from prior school or academic year. [5 CCR §§ 16022, 59022]
5. Specify the scheduled retention period for each record and the frequency of its review.
6. Estimate the approximate cost of records management.

#### Classification of Records

Classify documents and other paper and electronically based records originating during the prior school year according to California Code of Regulations and district policy.

#### Appraisal of Records

1. Establish retention periods for all records.
2. Identify records requiring limited accessibility that may be transferred from office space or electronic media to storage.
3. Determine feasibility of making photographic, microfilm, or electronic copies of Class 1–Permanent records. [EC § 35254; 5 CCR §§ 16022(c), 59022(e)]

#### Development, Approval, and Application of Disposition Schedule (Exhibit 4)

1. Retain current records in office space or accessible storage location or electronic media. Document locations of all records.
2. Transfer inactive records to storage space or electronic media as appropriate. Reproduce records on film or electronically as appropriate. Document locations of all records.
3. Destroy Class 3–Disposable records according to application of normal approved business procedures. Once a lawsuit has been filed and the records are pertinent to that lawsuit, a “litigation hold” will require that the records be retained.

SUMMARY OF STATE REQUIREMENTS FOR  
RECORDS RETENTION, TRANSFER AND DESTRUCTION

School Districts

1. Retention, destruction, generally
  - a. Education Code sections 35253 through 35254
  - b. Title 5, California Code of Regulations, section 16020 et seq.
2. Retention, destruction, pupil records
  - a. Education Code sections 49062, 49070(b)(c), 49558, 51747(b)
  - b. Title 5, California Code of Regulations, section 437
3. Transfer, pupil records
  - a. Title 5, California Code of Regulations, section 438
  - b. Education Code sections 8282, 47605(b)(5)(P), 49068, 49069.5, 51747(b), 56515, 58930
  - c. FERPA [34 CFR §§ 99.7, 99.34(a)(ii)]
  - d. NCLB [20 USC § 7221]

Community College Districts

1. Retention, destruction, generally

Title 5, California Code of Regulations, section 59020 et seq.
2. Retention, destruction, student records
  - a. Education Code sections 76220, 76232
  - b. Title 5, California Code of Regulations, section 54608

3. Transfer, student records

- a. Education Code section 76225
- b. FERPA [34 CFR §§ 99.7, 99.34(a)(ii)]

Transfer, District Reorganization

1. School districts, Education Code section 35562
2. Community College Districts, Education Code section 74280

FORMS FOR RESPONSE TO REQUEST FOR COPY OF RECORDS

A court order, lawfully issued subpoena, or written request for records received by an officer or employee of the district shall be processed by the designated custodian of records, for example:

District Superintendent or his/her designee: Agendas or copy of all the documents constituting the agenda packet of any meeting and any other writings that are public records distributed to members of the Governing Board on matters subject to discussion or consideration at an open meeting by the Board. [GC §§ 54954.1, 54957.5]

Division Assistant Superintendent: Records under his/her control.

Student Services: Records of currently enrolled students or former students in the schools or programs operated by the district.

Human Resources: Personnel Commission records or personnel records.

Internal Business Services: Records requested pursuant to claims or lawsuits.

A sample letter for response to a request for public records pursuant to board policy or regulations for inspecting and receiving a copy of an identifiable public record is presented as Exhibit 5. Contact legal counsel for advice upon receipt of a discovery request that specifies intent to request records, including electronically-stored data, for use in litigation.

## ADDITIONAL RESOURCES

1. California Department of Consumer Affairs, Office of Privacy Protection. Available: <<http://www.privacy.ca.gov/>>
2. California Department of General Services:  
  
*Records Retention Handbook*. Available: <<http://www.osp.dgs.ca.gov/recs/rrhtoc.htm>>  
  
*State Administrative Manual*, revised 2006. Available: <<http://sam.dgs.ca.gov/TOC/default.htm>>
3. California Records and Information Management (CalRIM), California Department of General Services:  
  
*Electronic Records Management Handbook, 2002*. Available: <<http://www.osp.dgs.ca.gov/recs/erm.htm>>  
  
Records and Document Management Program. Available: <<http://www.osp.dgs.ca.gov/CalRIM/default.htm>>  
  
*Records Retention Schedule Guidelines, January 2007*. Available: <<http://www.documents.dgs.ca.gov/osp/calrim/RRSchedGuide06.doc>>
4. Education Department Government Administrative Regulations (EDGAR), Code of Federal Regulations, Title 34. U.S. Department of Education. Available: <<http://www.ed.gov/policy/fund/reg/edgarReg/edgar.html>>
5. *Educator's Guide to Student Records 2007 Edition*, Los Angeles County Office of Education, available for \$25.00 from:  
Pam Post, Student Support Services  
Los Angeles County Office of Education  
9300 Imperial Highway ECC-3254  
Downey, CA 90232-2890
6. Freedom of Information Act (FOIA) [5 USC § 552]. Available: <<http://www.usdoj.gov/oip/privstat.htm>>
7. National Forum on Education Statistics, *Forum Guide to the Privacy of Student Information: A Resource for Schools*, NCES 2006-805. Washington, DC: 2006 Available: <<http://nces.ed.gov/pubs2006/2006805.pdf>>

8. National Forum on Education Statistics, *Forum Guide to Protecting the Privacy of Student Information: State and Local Education Agencies*, NCES 2004-330. Washington, DC: 2004. Available: <<http://nces.ed.gov/pubs2004/2004330.pdf>>
9. No Child Left Behind Act, U.S. Department of Education. Available: <<http://www.ed.gov/nclb/landing.jhtml>>
10. Schools and Libraries Division, Universal Service Administrative Company, for retention of records and audits for E-rate funding. Available: <<http://www.universalservice.org/sl/about/audits/default.aspx/>>
11. *State Administrative Manual*, California Department of General Services, revised 2006. Available: <<http://sam.dgs.ca.gov/TOC/default.htm>>
12. *Summary of the California Public Records Act 2004*, California Attorney General's Office. Available: <[http://caag.state.ca.us/publications/summary\\_public\\_records\\_act.pdf](http://caag.state.ca.us/publications/summary_public_records_act.pdf)>

#### LIST OF EXHIBITS

- |           |  |
|-----------|--|
| Exhibit 1 | Certification of Authenticity of the Foregoing Microfilms or other Photographic Reproductions by Head of Agency, Sample Form, Title 11, California Code of Regulations |
| Exhibit 2 | Certificate of Individual Microfilm or other Photographic Reproduction, Sample Form, Title 11, California Code of Regulations  |
| Exhibit 3 | Records Inventory Sheet, Sample Form, San Diego County Office of Education (SDCOE)   |
| Exhibit 4 | Records Disposition Schedule, Sample Form, SDCOE   |
| Exhibit 5 | Response Letter for Request for Public Records, Sample, SDCOE  |

TITLE 11 Attorney General--Approved Certification Forms 108.13  
(Register 66, No. 44--12-17-66) [11CCR, § 200]

SUBCHAPTER 3. MICROFILMING AND OTHER PHOTOGRAPHIC  
REPRODUCTIONS

Article 1. the Forms of Certification Approved

Section	Section
200. Form	203. General Certification-- Irrigation Districts
201. General Certification	204. Individual Certification--Irrigation Districts
202. Individual Certification	

**200. Form.** The form of certification for microfilming or other photographic reproduction of public records, approved by the Attorney General and required by the respective statutes, rules, and regulations shall be substantially as set forth in the following regulation in this article.

NOTE: New authority cited: Section 14750, Government Code.

- History:*
1. New article (sections 200, 201 and 202) filed 12-3-53 as an emergency; effective upon filing (Register 53, No 22).
  2. Citation of new authority filed 12-13-66 (Register 66, No. 44).

**201. General Certification.** General certification of head of agency (Section 14756 of the Government Code): [11CCR, § 201]

**CERTIFICATION OF AUTHENTICITY OF THE FOREGOING MICROFILMS  
OR OTHER PHOTOGRAPHIC REPRODUCTIONS BY HEAD OF AGENCY**  
(Section 14756, Government Code)

I, \_\_\_\_\_ hereby certify to the following in connection with the foregoing (microfilm) (photographic reproductions):

That I am the official and lawful custodian of the records microfilmed or photographically reproduced and preserved in \_\_\_\_\_

(Agency)

as \_\_\_\_\_ identified and described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

That the reason and authorization for this reproduction is as follows: \_\_\_\_\_

\_\_\_\_\_

That certification is herein made pursuant to Section 14756 of the Government Code.

That these (microfilms) (photographic reproductions) of the above-described records were taken under my direction and control on \_\_\_\_\_, 20 \_\_\_\_ and that they are a complete, true, and correct copy thereof.

That the microfilming or other photographic processes were accomplished in a manner and on film which meets with the standard specification of the United State National Bureau of Standards.

Disposition of records reproduced:

- To be destroyed
- To be deposited in the Central Records Depository (Secretary of State)
- To be preserved in the State Archives (Secretary of State)
- To be retained by the agency \_\_\_\_\_  
(Agency)
- Other disposition \_\_\_\_\_

\_\_\_\_\_  
(Describe fully)

That this certificate was made at the time of the taking of this (microfilm) (photographic reproduction).

IN WITNESS WHEREOF, I have hereunto set my hand (and affixed my official seal) this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Head of agency)

\_\_\_\_\_  
(Capacity and organization title)

[SEAL]

*History:* 1. Amendment filed 12-13-66; effective thirtieth day thereafter (Register 66, No. 44).

**202. Individual Certification.** Certificate of head of agency of individual microfilm or other photographic reproduction (Section 14756, Government Code): [11CCR, § 202]

**CERTIFICATE OF INDIVIDUAL MICROFILM OR OTHER  
PHOTOGRAPHIC REPRODUCTION**  
(Section 14756, Government Code)

I, \_\_\_\_\_  
hereby certify to the following in connection with the foregoing (microfilm) (photographic reproduction):

That I am the official and lawful custodian of the records microfilmed or photographically reproduced and preserved in \_\_\_\_\_

(Agency)

as \_\_\_\_\_ identified and described as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

That the reason is herein made pursuant to Section 14756 of the Government Code.

That this (microfilm) (photographic reproduction) of the above-described records was taken under my direction and control on \_\_\_\_\_, 20 \_\_\_\_, and that it is a complete, true, and correct copy thereof.

That the microfilming or other photographic processes were accomplished in a manner and on film which meets with the standard specification of the Unified States National Bureau of Standards.

Location of records reproduced: \_\_\_\_\_

That this certificate was made at the time of the taking of his (microfilm) (photographic reproduction).

IN WITNESS WHEREOF, I have hereunto set my hand (and affixed my official seal) this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
(Head of agency)

\_\_\_\_\_  
(Capacity and organizational title)

[SEAL]

*History:* 1. Amendment filed 12-13-66; effective thirtieth day thereafter (Register 66, No. 44).

**Evidence Code § 1531**

For the purposes of evidence, whenever a copy of a writing is attested or certified, the attestation or certification must state in substance that the copy is a correct copy of the original, or of a specified part thereof, as the case may be.

**RECORDS INVENTORY WORKSHEET**

Organization Unit:		Date:	
Person Responsible for Records:			
Record Series Title:			
Location	School Year(s)	Range <sup>1</sup>	Volume

1. Range of portion of record series if kept in different locations, i.e., by date, coding, alphabetical, numerical.

The following approximate units of measurement and related data were derived from the Paperwork Management Handbook-Records Disposition prepared by the State of California and may be used by districts to determine amounts of records in the inventory.

Multiply linear footage of records by ratio factor to compute cubic footage			
Size of Document	Ratio Factor	Size of Document	Ratio Factor
3" x 5"	.1	8" x 12½"	.7
4" x 6"	.17	8½" x 11"	.66
4" x 9"	.26	9½" x 12"	.79
5" x 8"	.28	9½" x 15"	.99
8" x 10½"	.58		

- 1 Cubic foot of records weighs 30 pounds
- 1 Ton of records equals 70 cubic feet
- 1 Cubic foot equals 3,000 letter-sized sheets of paper

**RECORDS DISPOSITION SCHEDULE**

Department:					
Organization Unit:					
FORM NO.	TITLE AND DESCRIPTION	CLASSIFICATION	OFFICE	RETENTION STORAGE	TOTAL

Date

Name  
Title  
XYZ Corporation  
Address

Dear \_\_\_\_\_:

Re: Response to Public Records Act Request Regarding [State Request of Public Records Requested].

In response to the Public Records Act requested by the XYZ Corporation (XYZ) dated \_\_\_\_\_ 20\_\_\_\_, the County Superintendent of Schools (Superintendent) hereby responds and advises XYZ as follows:

1. The Superintendent has identified his/her documents containing the following information and will allow inspection thereof by XYZ upon request:
  - a) [List the copies of records requested.]
2. The fee established by the Superintendent to cover the direct costs of duplication by the Superintendent for copying documents pursuant to Public Records Act request is [\_\_\_\_\_] (e.g., \_\_\_\_\_ cents per page).\*
3. The approximate volume of documents responsive to the request by XYZ is \_\_\_\_\_ pages. A copy of the Superintendent's regulations concerning the procedures to be followed for obtaining records under the Public Records Act will be provided upon payment of the costs of the duplication of [estimated amount].
4. The disclosable public records will be made available on or about [date] and [time]. The format is [technology] and the location is [site].

Please call [name] at telephone [number] to arrange a time for the inspection of the requested documents or to pay the amount due for the Superintendent to provide copies of the requested documents.

Sincerely,

Name  
Title/Position

Note: Title is required when written denial of request is made. [GC, §§ 6253(d), 6255]

\* Establish fee for reproduction only. Costs associated with gathering and assembling documents cannot be charged.