

Date of Hearing: April 9, 2025

ASSEMBLY COMMITTEE ON EDUCATION
Al Muratsuchi, Chair
AB 1401 (Patterson) – As Introduced February 21, 2025

[Note: This bill is double referred to the Assembly Privacy and Consumer Protection Committee and may be heard by that Committee as it relates to issues under its jurisdiction.]

SUBJECT: Pupil records: parental access

SUMMARY: Clarifies the rights of parents and guardians of students in public schools to have the right and opportunity to participate in the education of their children by, among other rights, having access to both official and unofficial school records of their child. Specifically, **this bill:**

- 1) Clarifies the rights of parents and guardians of students in public schools to have the right and opportunity to participate in the education of their children by, among other rights, having access to both official and unofficial school records of their child.

EXISTING LAW:

Federal law and regulations:

- 1) Federal law, the Family Educational Rights and Privacy Act (FERPA), provides certain rights for parents regarding their children's education records. (20 United States Code Section 1232g; 34 CFR Part 99)
- 2) Federal regulations pursuant to FERPA require that a parent be given the opportunity to inspect and review a student's educational records; requires the educational agency to comply with a request for access to records within a reasonable period of time not to exceed 45 days; requires that if circumstances effectively prevent the parent from exercising the right to inspect and review the records, the educational agency provide the parent with a copy of the records requested or make other arrangements for the parent to inspect and review the requested records. (34 CFR 99)
- 3) Federal regulations define "education records" as those records that are directly related to a student; and maintained by an educational agency or institution or by a party acting for the agency or institution. The term does not include:
 - a) Records that are kept in the sole possession of the maker, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the record;
 - b) Records of the law enforcement unit of an educational agency or institution;
 - c) Records relating to an individual who is employed by an educational agency or institution, that: are made and maintained in the normal course of business; relate exclusively to the individual in that individual's capacity as an employee; and are not available for use for any other purpose;

- d) Records relating to an individual in attendance at the agency or institution who is employed as a result of his or her status as a student are education records;
- e) Records on a student who is 18 years of age or older, or is attending an institution of postsecondary education, that are: made or maintained by a physician, psychiatrist, psychologist, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity; made, maintained, or used only in connection with treatment of the student; and disclosed only to individuals providing the treatment;
- f) Records created or received by an educational agency or institution after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student; and
- g) Grades on peer-graded papers before they are collected and reported by a teacher. (34 CFR 99)

State law:

- 4) Affords parents and guardians of students enrolled in public schools the right, as mutually supportive and respectful partners in the education of their children within the public schools, to be informed by the school, and to participate in the education of their children as follows:
 - a) Within a reasonable period of time following making the request, to observe the classroom or classrooms in which their child is enrolled or for the purpose of selecting the school in which their child will be enrolled in accordance with the requirements of any intradistrict or interdistrict pupil attendance policies or programs;
 - b) Within a reasonable time of their request, to meet with their child's teacher or teachers and the principal of the school in which their child is enrolled;
 - c) To volunteer their time and resources for the improvement of school facilities and school programs under the supervision of district employees, including, but not limited to, providing assistance in the classroom with the approval and under the direct supervision of the teacher. Although volunteer parents may assist with instruction, primary instructional responsibility shall remain with the teacher;
 - d) To be notified on a timely basis if their child is absent from school without permission;
 - e) To receive the results of their child's performance on standardized tests and statewide tests and information on the performance of the school that their child attends on standardized statewide tests;
 - f) To request a particular school for their child and to receive a response from the school district. This does not obligate the school district to grant the parent's request;
 - g) To have a school environment for their child that is safe and supportive of learning;
 - h) To examine the curriculum materials of the class or classes in which their child is enrolled;

- i) To be informed of their child's progress in school and of the appropriate school personnel whom they should contact if problems arise with their child;
 - j) To have access to the school records of their child;
 - k) To receive information concerning the academic performance standards, proficiencies, or skills their child is expected to accomplish;
 - l) To be informed in advance about school rules, including disciplinary rules and procedures, attendance policies, dress codes, and procedures for visiting the school;
 - m) To receive information about any psychological testing the school does involving their child and to deny permission to give the test;
 - n) To participate as a member of a parent advisory committee, schoolsite council, or site-based management leadership team, in accordance with any rules and regulations governing membership in these organizations. In order to facilitate parental participation, schoolsite councils are encouraged to schedule a biannual open forum for the purpose of informing parents about current school issues and activities and answering parents' questions. The meetings should be scheduled on weekends, and prior notice should be provided to parents;
 - o) To question anything in their child's record that the parent feels is inaccurate or misleading or is an invasion of privacy and to receive a response from the school; and
 - p) To be notified, as early in the school year as practicable, if their child is identified as being at risk of retention of their right to consult with school personnel responsible for a decision to promote or retain their child, and their right to appeal a decision to retain or promote their child. (Education Code (EC) 51101)
- 5) Authorizes an LEA, pursuant to a policy adopted by its governing board, to enter into a contract with third parties to provide services, including cloud-based services, for the digital storage, management, and retrieval of pupil records, and to provide digital educational software, provided the contract includes specific provisions about the security, use, ownership, and control of the pupil records. (EC 49073.1)
- 6) Requires a school district, county office of education (COE), or charter school that considers a program to gather or maintain in its records any information obtained from social media of any enrolled pupil shall notify pupils and their parents or guardians about the proposed program and provide an opportunity for public comment at a regularly scheduled public meeting of the governing board or body before the adoption of the program. Also requires the notification of each parent or guardian of a pupil subject to the program that the pupil's information is being gathered from social media and that any information subject to this section maintained in the school records with regard to the pupil shall be destroyed one year after a pupil turns 18 or within one year after the pupil is no longer enrolled. The notification must also include, but is not limited to, all of the following:

- a) An explanation of the process by which a pupil or a pupil's parent or guardian may access the pupil's records for examination of the information gathered or maintained pursuant to this section; and
 - b) An explanation of the process by which a pupil or a pupil's parent or guardian may request the removal of information or make corrections to information gathered or maintained pursuant to this section. (EC 49073.6)
- 7) Prohibits access to pupil records to a person without written parental consent or under judicial order, except as identified, including those with a legitimate educational interest. (EC 49076)
- 8) Defines the following terms:
- a) "Pupil record" as any item of information directly related to an identifiable pupil, other than directory information, that is maintained by a school district or required to be maintained by an employee in the performance of his or her duties whether recorded by handwriting, print, tapes, film, microfilm, or other means, but does not include informal notes related to a pupil compiled by a school officer or employee that remain in the sole possession of the maker and are not accessible or revealed to any other person except a substitute; and
 - b) "Directory information" as one or more of the following items: pupil's name, address, telephone number, date of birth, email address, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous public or private school attended by the pupil. (EC 49061)
- 9) Requires any information of a personal nature disclosed by a pupil 12 years of age or older in the process of receiving counseling from a school counselor be kept confidential, and any information of a personal nature disclosed to a school counselor by a parent or guardian of a pupil who is 12 years of age or older and who is in the process of receiving counseling from a school counselor be kept confidential. Prohibits the information from becoming part of the pupil record without the written consent of the person who disclosed the confidential information. Prohibits this information being revealed, released, discussed, or referred to, except as specified, including reporting information to the principal or parents of the pupil when the school counselor has reasonable cause to believe that the disclosure is necessary to avert a clear and present danger to the health, safety, or welfare of the pupil or others in the school community. (EC 49602)
- 10) Defines "pupil record" to mean information relative to an individual pupil gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained. States that essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record. (Title 5 California Code of Regulations (CCR) Sections 430 and 432)
- 11) Defines "mandatory permanent pupil records" to mean those records which are maintained in perpetuity and which schools have been directed to compile by California statute, regulation, or authorized administrative directive. (5 CCR 430)

- 12) Requires, pursuant to the Individuals with Disabilities Education Act (IDEA), public agencies to inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. Requires this information to be destroyed at the request of the parents. However, permits a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed to be maintained without time limitation. (34 CFR 300.624)

FISCAL EFFECT: The Office of Legislative Counsel has keyed this bill as non-fiscal.

COMMENTS:

Need for the bill. According to the author, “There is a growing concern that there are secret records being kept from parents. In an effort to create a level of trust, it is imperative that the state legislature clarify existing law and affirm that parents have access to all records, official and unofficial. For decades, studies have shown that increased parental involvement is directly related to increased student achievement. This is an opportunity for the state legislature to reaffirm their commitment to parents and parent involvement.”

State regulations establish maintenance and disposal requirements for three types of student records, including some which must be maintained indefinitely. Current law requires student records for public schools be kept on file for each student enrolled in school, and requires school districts to maintain all mandatory permanent records, or an exact copy of the records, for every student enrolled in the district.

State regulations define “pupil record” to mean information relative to an individual pupil gathered within or without the school system and maintained within the school system, regardless of the physical form in which it is maintained. The regulations state that “essential in this definition is the idea that any information which is maintained for the purpose of second party review is considered a pupil record.”

Additionally, the Individuals with Disabilities Education Act (IDEA) specifies requirements for the maintenance and disposal of records for students with individualized education programs (IEPs). This law requires public agencies to inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. Requires this information to be destroyed at the request of the parents. However, permits a permanent record of a student's name, address, and phone number, his or her grades, attendance record, classes attended, grade level completed, and year completed to be maintained without time limitation.

State and federal law already give parents the rights to access student records. FERPA is a federal law addressing the privacy of students’ educational records and gives parents and guardians certain rights regarding their child's education records. Except under certain specified circumstances, FERPA affords parents and guardians the right to inspect and review the student’s education records. Parents and guardians have the right to request that a school correct records that they believe to be inaccurate or misleading. If the school does not amend the record as requested, the school must offer the parent or guardian a hearing on the matter.

According to the U.S. Department of Education (USDOE), FERPA protects “education records,” which are generally defined as records that are directly related to a student and maintained by an educational agency or institution or by a party acting for the agency or institution. An “educational agency or institution” generally means a school district, a public elementary or secondary school, or an institution of postsecondary education such as a college or university.

Under FERPA, a school must annually notify parents of their rights under FERPA. The FERPA annual notification must include information regarding a parent’s right to inspect and review his or her child’s education records, the right to seek to amend the records, the right to consent to disclosure of personally identifiable information from the records (except in certain circumstances), and the right to file a complaint with the Student Privacy Policy Office of the DOE regarding an alleged failure by a school to comply with FERPA. A school is not required to notify parents individually but rather is required to provide the notice by any means that are reasonably likely to inform parents of their rights. These means could include publication in a school activities calendar, newsletter, student handbook, or on a school’s website.

Further, pursuant to FERPA, a school must provide a parent with an opportunity to inspect and review their child’s education records within a reasonable period of time, but not more than 45 calendar days following receipt of a request. A school is generally not required to provide copies of the education records unless circumstances effectively prevent the parent from exercising the right to inspect and review the education records. For example, if a parent who does not live within commuting distance of their child’s school requests that the school provide access to his or her child’s education records, the school would be required to make other arrangements for the parent to inspect and review the requested records, or to provide a copy of the requested records.

The U.S. DOE identifies records which are exempt from FERPA:

- Records which are kept in the sole possession of the maker of the records, are used only as a personal memory aid, and are not accessible or revealed to any other person except a temporary substitute for the maker of the records;
- Records of the law enforcement unit of an educational agency that are: (1) created by a law enforcement unit; (2) created for a law enforcement purpose; and (3) maintained by the law enforcement unit;
- Records relating to an individual who is employed by an educational agency that are made and maintained in the normal course of business, relate exclusively to the individual in that individual’s capacity as an employee and are not available for use for any other purpose;
- Records on a student who is 18 years of age or older, or attending a postsecondary institution, that are: (1) made or maintained by a physician or other recognized professional acting in that capacity; (2) made, maintained, or used only in connection with treatment of the student; and (3) disclosed only to individuals providing the treatment;
- Records that are created or received by an educational agency after an individual is no longer a student in attendance and that are not directly related to the individual’s attendance as a student; and

- Records that are grades on peer-graded papers before they are collected and recorded by a teacher.

State law further clarifies the rights of parents to have access to the school records of their child. ***This bill*** specifies the rights of parents to access both official and unofficial school records of their child. No definition of “unofficial school records” is provided and we are not aware of any definition in state or federal statute or regulation that defines unofficial school records. ***The Committee may wish to consider*** whether existing protections under FERPA and state law provide sufficient access to all relevant student records.

Arguments in support. The Protection of the Educational Rights of Kids (PERK) writes, “PERK supports AB 1401 because the bill would enhance parents' and guardians' rights to access school records concerning their children. PERK believes that parents are primarily responsible for the well-being and education of their children. Having access to school records helps them ensure that their child is receiving the appropriate education, support, and services. It also enables them to stay informed about their child's academic progress, behavior, and overall school experience. By reviewing school records, parents can advocate for their child's needs more effectively. If there are concerns about a child's performance, behavior, or special needs, access to records allows parents to work with teachers and administrators to address any issues early on. Access to school records promotes transparency between schools and families. It fosters trust and collaboration, as parents are able to verify what is happening in the classroom and ensure that their children's needs are being met.”

Arguments in opposition. The Alameda County Office of Education writes, “ACOE respects the existing rights of parents and guardians to be informed partners in the education of their children including the existing right to access school records maintained by an educational institution, including enrollment information, transcripts, health records, and discipline records. This bill, however, would create an onerous, potentially harmful, expansion of those rights by providing unfettered access to all unofficial records without any restricting definition in this statute of what constitutes unofficial records. This provision could open a veritable flood gate of potential records requests for materials that are not presently maintained by a school.”

Without a definition in the statute, such unofficial records could include a student’s personal journal entry, a teacher’s note to a colleague expressing or requesting support for a student, or personal notes by a practitioner, which would violate the current right a student over 12 years of age has to access mental and sexual health care without notification of a parent.

ACOE’s mission is to equip vulnerable students with the tools they need to thrive. This bill may put vulnerable student populations at risk, including LGBTQ+ students, by giving parents documents that students have not intended to share with their parents.

AB 1401 would also place an undue administrative burden upon staff to maintain and respond to requests for materials, taking them away from their duties serving students.”

Related legislation. AB 801 (Joe Patterson) Chapter 935, Statutes of 2024, requires an operator of an internet website, online service, online application, or mobile application to delete a student's information, as defined, at the request of the student's parent or guardian, if the student is no longer attending a school or school district.

SB 2799 (Chau) Chapter 620, Statutes of 2016, establishes the Early Learning Personal Information Protection Act which prohibits operators of websites, online services, and mobile apps that are designed, marketed and used primarily for prekindergarten and preschool students, from using data about those students for targeting, marketing or profiling, and prohibits selling or disclosing a student's information with limited exceptions.

SB 1177 (Steinberg) Chapter 839, Statutes of 2014, establishes the SOPIPA to restrict the use and disclosure of information about K-12 students.

AB 1584 (Buchanan) Chapter 800, Statutes of 2014 authorizes a local education agency (LEA), pursuant to a policy adopted by its governing board, to enter into a contract with third parties to provide services, including cloud-based services, for the digital storage, management, and retrieval of pupil records, and to provide digital educational software, provided the contract includes specific provisions about the security, use, ownership, and control of the pupil records.

AB 2262 (Bradford) Chapter 17, Statutes of 2012, authorizes the governing board of each school district to, at the request of parents or guardians, provide the annual notice of parent or guardian rights and responsibilities in an electronic format. Requires the notice provided in an electronic format to conform to the provisions under current law requiring all notices, reports, statements, or records sent to a parent or guardian to be written in English and in a pupil's primary language if 15% or more of the pupils enrolled in the school speak that language. Requires a parent or guardian that receives the notice in an electronic format to submit to the school a signed acknowledgment of receipt of the notice.

REGISTERED SUPPORT / OPPOSITION:

Support

Protection of the Educational Rights of Kids

Opposition

Alameda County Office of Education

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