



SFUSD Legal Department - Response to Confidentiality Questions **From November/December 2009 SSSD Confidentiality PD**

1. Who are the people, specifically, allowed access to cums? What materials in the cum are they permitted/not permitted to see?

The law does not define certain categories of employees who can see cum folders, and does not define certain types of student records that can be viewed by particular types of employees.

Instead, the law provides that student records may be viewed by school staff who have a "legitimate educational purpose" for viewing the records. "Legitimate educational purpose" means that the employee needs to review the record in order to fulfill his or her professional responsibility. For example:

- The school principal would need to have full access to student cum folders, because this would be necessary to perform her/his job responsibilities of overseeing student learning, discipline, support services and parent relations.
- Teachers may require access to some records in the cum to assist them in their teaching responsibilities. For example, review of student test scores, prior discipline or academic issues that may impact learning. Teachers also require access to special education folders to understand student needs and meet IEP requirements.
- Other school staff (i.e. Counselors, LSPs) also need access to cum folders and special education folders to perform their job responsibilities. (i.e., to identify past discipline or behavior issues and support services provided to a student).

It is not possible to provide an exhaustive list of all staff and all documents that may be viewed by each type of employee. To determine which records may be viewed by a staff person, you must evaluate whether the particular staff person needs the information to perform their job responsibilities.

2. Please clarify what information (counseling, Wellness & disciplinary) should be put on School Loop & where they go. School Loop is being used loosely with confidential info. it needs to be clarified to everyone.

Student records must remain confidential and secure and should only be accessible to parents/guardians or school staff with legitimate educational purposes. There is no legal

prohibition to placing student information on a database, as long as (1) the database is secure from outside intrusion, and (2) the various categories of information placed on the database are only accessible to staff with a legitimate educational purpose (and the parent if this is the intention of School Loop).

Sensitive student information such as counseling, Wellness or discipline records should not be widely accessible to a broad range of staff. Therefore the School Loop database should ensure that all categories of information are password-protected, and that each individual type of information is only accessible to persons who have been determined in advance to have a legitimate educational purpose for reviewing the information.

Staff must be advised of the importance of maintaining the secrecy of their database passwords, and the disciplinary consequences of intentionally or negligently sharing their passwords with any other person.

3. Can parent/guardian access their child's SST folder, CUM folder upon request?

Yes. Under both federal and state law, parents have the legal right to view their child's education records (as defined in #11, below). Under state law, the school must provide the parent with this access (either reviewing the documents or getting copies) within 5 days. The school can charge the parents the actual cost of making the copies (10 cents a page).

4. How can students be released for sensitive services (reproductive health) and maintain student confidentiality – i.e. SIS/attendance automatically sends a phone call home and school loop shows attendance to parents.

This is a very difficult issue, because it requires the school site to balance the parent's right to access their child's records with the student's right to access sensitive medical services without parental consent. To address this conflict, the Student Support Services Department has worked with the Legal Department to develop a process to release pupils for sensitive services. (Attached)

5. Clarification of SAP participation with contracted people – CBOs/consultants.

School sites may want to invite CBOs or consultants with helpful expertise to participate in their SAP meetings. These meetings typically involve a review and/or discussion of student records, and therefore the CBO/consultant could only participate if one of the following is true:

- The CBO/consultant has a signed parental consent permitting them to have access to pupil records, or to participate in the SAP meeting.

- The CBO/consultant is under a paid contract with SFUSD and has a legitimate educational purpose for participating in the meeting (i.e., they need to be in the meeting to fulfill their professional responsibility under their contract with the District).
- The SAP meeting is held without revealing any personally identifiable information about a student (no names or other information that reveals the identity of the pupil). Such meetings could be held to present anonymous scenarios and obtain guidance from our partners in the community.

6. If outside providers participate in SST or other inter-disciplinary meetings, does the parent/guardian have to sign a release? Can you please address the education orders we have on file for foster youth?

An outside provider would need to meet one of the conditions listed above in #5 to participate in an SST or other inter-disciplinary meeting where student records will be reviewed and/or discussed.

If a foster youth has a court order that permits the District to share student records with their social worker or other identified person, then the District can share the student's records with the designated person(s). The standard court orders issued for foster youth in San Francisco typically do include this type of authorization. Before sharing information about the student, the school site should confirm that such an order is on file with the District Foster Youth Liaison – (415)242-2615.

7. Can info regarding Brief Intervention Services be placed in SIS? Dean at my site writes very specific info on SIS, including his own speculations about students, (e.g. gang affiliations, etc.) is this OK?

A referral to BIS can be placed on SIS. For example: "Student X referred to Wellness Center for BIS." However, specific details about the student's conduct or reason for referral should be maintained by the Wellness Center Coordinator in a more secure location that cannot be widely accessed. Specific details or speculations about a student's potential gang affiliations should not be placed on SIS.

8. When a teacher writes a referral on a student it is put on student's SIS file so a history of student is kept for future conferences with students/parents/teachers. Many of our MS parents deny their child never is in trouble. Also, the child denies he receives referrals. Is it ok to put them on SIS file?

Yes. A student referral to the dean, counseling office or principal can be placed on SIS. For example: "Student X referred to dean for disciplinary purposes." However, specific

details/notes about the student's counseling session should be maintained separately by the dean, counselor or principal in a more secure location that cannot be widely accessed.

9. Does confidentiality protocol extend to everything in brown folders?

Yes. The confidentiality protections of state and federal law apply to special education records in the brown folder, just as they apply to any other student record created and maintained by SFUSD staff, regardless of where the record is located. (i.e., brown folder, cum folder, SST folder, SAP folder, etc). The definition of "student records" is very broad:

"Student records" include any items of information (in handwriting, print, tape, film, computer, or other medium) gathered within or outside the district that are directly related to an identifiable student and maintained by the district, required to be maintained by an employee in the performance of his/her duties, or maintained by a party acting for the district.

10. Learning Support Professionals, Wellness Coordinators and school nurses are bound by HIPAA. Does this conflict? If so, how are they reconciled?

While health care professionals are generally bound by the privacy restrictions of the Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA), this is not the case for our staff who are working within the context of the school district.

As SFUSD employees, all LSPs, Wellness Coordinators and school nurses are bound by FERPA (Family Education Rights Privacy Act). Therefore, all student records created and maintained by these employees are protected by the confidentiality provisions of FERPA, and HIPAA privacy protections do not apply.

This is because the privacy regulations of HIPAA specifically exempt "education records" that are already covered by FERPA. (See 45 CFR Part 160.103) ("Protected health information" under HIPAA "excludes individually identifiable health information in: (i) Education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; (ii) Records described at 20 U.S.C.1232g(a)(4)(B)(iv)").