



## **SFUSD Legal Department - Response to Confidentiality Questions - Part 2** **From January 2010 Optional SSSD Confidentiality PD**

### **1) Can sole possession records be kept on district computers?**

Sole possession records can be maintained on a District computer ONLY IF there is a way to ensure that these records are only accessible to the maker, and not to any other employee of SFUSD (except a short term substitute). If another SFUSD employee can access these records, then they are not “sole possession” records—instead, they are considered part of the student’s “education records” and are accessible to parents/guardians upon their request.

### **2) Can a copy of the IEP go into the student’s cum?**

Yes. The law does not prohibit placement of an IEP in the cum folder. In fact, the law does not contemplate “cum” folders and “brown” folders—this is an internal practice of the District. As a legal matter, student records (including an IEP) can be placed in the cum folder, and should only be accessed by school staff who need to review the IEP to do their jobs (i.e.) teachers who have a special education student in their class and must comply with the IEP strategies for instructing the student.

While the law does not require a separate folder for special education records, our District uses this practice as an extra level of security around these highly confidential documents. In support of this practice, other extremely sensitive special education materials (such as psychological assessments or physical health information) should be maintained in the brown folder. Teachers or other staff who have a legitimate educational reason to review these other special education records would need to contact the special education staff person to explain their legitimate purpose for having access to these documents.

### **3) One parent is a sex offender. How do we notify the school staff?**

The California Penal Code(CPC) permits law enforcement entities to provide the public with information about registered sex offenders, by whatever means deemed appropriate by the law enforcement agency, including notification through the Megan’s Law website. CPC Section 290.45(a)(1), 290.46. The purpose of the dissemination is to allow members of the public to protect themselves and their children from sex offenders. CPC Section 290.45(a)(2). A person who receives sex offender information from a law enforcement entity may disclose that information only in the manner and to the extent authorized by the law enforcement entity. CPC 290.45(c)(2).

The Meagan's Law website states the following about using the information regarding sex offenders: "**Legal and Illegal Uses.** The information on this web site is made available solely to protect the public. Anyone who uses this information to commit a crime or to harass an offender or his or her family is subject to criminal prosecution and civil liability. . . (Pen. Code, § 290.46, subd. (h)(2).)"

Therefore, prior to disseminating information about a registered sex offender, the school site should contact local law enforcement (such as the SRO) to obtain guidance on such dissemination (who should be notified, and what information should be shared).

**4) Where do we find the code that says that both parents can access a student's records?**

Section 49069 of the Education Code provides that "Parents of currently enrolled or former pupils have an absolute right to access to any and all pupil records relative to their children that are maintained by school districts or private schools." Section 49061(a) defines "Parent" as follows: "'Parent' means a natural parent, an adopted parent, or legal guardian."

California Family Code Section 3025 states: "Notwithstanding any other provision of law, access to records and information pertaining to a minor child, including, but not limited to, medical, dental, and school records, shall not be denied to a parent because that parent is not the child's custodial parent." (Emphasis added). Therefore, either parent can access their child's records regardless of whether they have legal or physical custody of the child, UNLESS there is a court order that specifically states that the parent cannot have access to their child's records.

Similarly, the federal regulation for FERPA (34 CFR 99.4) states: "An educational agency or institution shall give full rights under the Act to either parent, unless the agency or institution has been provided with evidence that there is a court order, State statute, or legally binding document relating to such matters as divorce, separation, or custody that specifically revokes these rights." (Emphasis added).

**5) How long should I keep sole possession records?**

Sole possession records are NOT considered to be District records, and therefore they are not subject to the record retention rules for SFUSD. The employee who is keeping these informal and private notes shall determine how long to maintain them. The employee's personal licensing/professional responsibility standards may have suggested time limits to maintain such records.

**6) Should we note on SIS when a court order is received?**

Yes. Court orders often provide vital information about which parent has custody, who can pick up the child, whether there is an existing restraining order, or define which parent possesses educational rights. The existence of a court order defining rights related to the student should be noted in SIS to ensure that the District does not violate the order.

**7) Can school staff in different schools talk without written consent about CPS investigation and siblings' situations when siblings attend different schools?**

CPS reports and the identity of CPS reporters are confidential, and should not be shared with other staff/schools. However, the facts underlying the report could be shared with the principal at the other school to ensure that the District is providing support to all students affected by the potential abuse or neglect.

Under FERPA and state law, school staff can share education records and student information with each other if necessary for the employees to do their jobs. Facts regarding an abusive or neglectful home situation would be relevant for any school(s) serving the pupils who live in that home situation and are affected by the abuse or neglect. Sharing such information between schools should be coordinated by the principals, who will be responsible to make sure that the information is treated as confidential and is only shared with the minimal number of people who need to know to support the student(s).

Parents/guardians would never be informed about a CPS report. Staff should not seek consent from a parent/guardian to discuss abuse/neglect allegations.

**8) What information should be shared on the CWA & Transition Form and what information shouldn't be shared?**

The CWA & Transition Form requests information necessary to facilitate decision making regarding a student's disciplinary consequences or transition plan. The form is designed to request information that is relevant and necessary, and therefore staff should respond to the areas of inquiry included on the form.

If an employee is unsure about whether a particular item of information is relevant and should be included on the form, s/he should contact the person in Student Support Services who is collecting the form, to find out whether the information would be helpful and necessary in the particular student's case.

**9) For SIS notation, if you refer a student to a CBO for mental health support, could you indicate "Student referred to CBO for support" or name the agency, such as "referred to Instituto for family services?"**

The law does not prohibit the name of the CBO from being entered into SIS. As a best practice, the District encourages staff to limit private information from being included on SIS, because a wide range of staff has access to that database. To the extent possible, it is best to use SIS to document and give basic a "red flag" about an issue; and also to indicate where more information can be located about the incident/issue.

If the name of the CBO would reveal too much information (i.e., SAGE sexual assault support group), it would be better to say "referred to CBO for support. See cum file for more details." Some CBOs provide a broad range of services, and therefore naming the CBO may be less of an issue.

**10) When I do a conflict mediation between 2 or more students, I will list the other student involved on SIS notes by first initial and last name (e.g. conflict mediation with T. Jones). Is this OK?**

The law does not prohibit this entry from being entered into SIS. As a best practice, the District encourages staff to limit private information from being included on SIS, because a wide range of staff has access to that database. To the extent possible, it is best to use SIS to document and give basic a “red flag” about an issue; and also to indicate where more information can be located about the incident/issue.

For example, SIS could note that “conflict mediation was held between the student and another classmate (T.J.)”, and indicate that “more details are located on an office referral form in the cum file, dated: 2/17/10”. This way, appropriate staff who have a “need to know” will be able to locate additional details about the incident if necessary for his/her job.

**11) Can SST history and information (referrals, history, action items, and status of action items), as well as SAP meeting discussion and contact be shared with teachers?  
Example: At the beginning of the school year, teachers want a list of their new students who have SSTs and status of action items. What can we share and not share?**

FERPA and state law both provide that education records (such as SSTs, SAPs, etc) may be shared with school employees who require the information to perform their professional responsibility. If teachers require this information to do their jobs serving their students, then the information can be shared with them. (20 USC 1232g(b)(1)(A); Education Code Section 49076(a)(1)).

**12) Can we include a provision on assignment applications that gives the school permission to share a phone number with other parents in order to help build community and support the parent groups?**

The SFUSD Student Handbook (page 124) already provides that “Directory Information” (student name, address, date and place of birth, school) may be shared with the “school-sponsored” parent organization.

Currently, the Handbook does not allow sharing of telephone numbers, because the Education Code provides that Districts should minimize the release of family telephone numbers without express parental consent, to protect family privacy and avoid the possibility of harassment. (Education Code Section 49073.5(b)).

Telephone numbers can be shared if the parent/guardian gives their written permission.