

Can I have a document removed from my child's education records?

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Can I remove a record from my child's Education File?

The answer depends on what it is you are trying to remove.

Schools can be confusing for parents who are often plagued with bureaucracy and paperwork. What parents are often concerned about is stigmatizing labels and records which can and often will follow your child until they graduate.

What can be considered a stigmatizing record? A few examples might include an inaccurate disciplinary record, a misrepresentation of a fact such as what a parent or student said, an investigation of any kind of student matter which can be placed in the student file. This could also be an inaccurate educational document such as dates of school attendance or grades on report cards. Record requests and record challenges are discussed below.

Under the Family Educational Rights and Privacy Act ("FERPA"), a federal law with federal funding and a complaint process attached to it, parents and students *can* challenge and seek the removal of certain types of records. Section 1232g of the FERPA Act specifically states:

(2) No funds shall be made available under any applicable program to any educational agency or institution unless the parents of students who are or have been in attendance at a school of such agency or at such institution are provided an opportunity for a hearing by such agency or institution, in accordance with regulations of the Secretary, to challenge the content of such student's education records, in order to insure that the records are not inaccurate, misleading, or otherwise in violation of the privacy or other rights of students, and to provide an opportunity for the correction or deletion of any such inaccurate, misleading, or otherwise inappropriate data contained therein and to insert into such records a written explanation of the parents respecting the content of such records.

(3) For the purposes of this section the term "educational agency or institution" means any public or private agency or institution which is the recipient of funds under any applicable program.

(4) (A) For the purposes of this section, the term "education records" means, except as may be provided otherwise in subparagraph (B), those records, files, documents, and other materials which--

(i) contain information directly related to a student; and

(ii) are maintained by an educational agency or institution or by a person acting for such agency or institution.

State law also dictates how records are maintained and challenged.

In California, for example, there are four main sections in the California Education Records Law that pertain to the access of student records by parents. Sections 49069-49072 highlight a parent's rights to inspect and challenge documents, as well as the formal process for having a document removed.

Section 49069

This section of the code establishes in clear terms the parent's right to gain access to their child's student records through a school district or private school. This section also stipulates that the school district or school must give access to the records requested in no more than five days following the request.

Section 49070

This section of the code establishes the parent's right to challenge any information in the school records within 30 days of viewing. A dispute may be filed if the information meets any of the following categories:

- (1) Inaccurate.
- (2) An unsubstantiated personal conclusion or inference.
- (3) A conclusion or inference outside of the observer's area of competence.
- (4) Not based on the personal observation of a named person with the time and place of the observation noted.
- (5) Misleading.
- (6) In violation of the privacy or other rights of the pupil. (Note: This provision also relates to a federal privacy law, which will be discussed in a separate post, called FERPA).

If there is a reason for challenging the records, the superintendent's office will meet with the parent and the person who recorded the information and decide whether or not to keep the challenged information on record. If the superintendent agrees with the allegations then the records will be

changed. If the superintendent decides against the challenges then a parent has 30 days to appeal to the governing board. The governing board will provide the final decision of whether or not to keep information as part of the records. If a parent finds their decision unfavorable, they may file an objection which becomes part of the record until the information is changed or removed.

Section 49071

This section establishes additional procedures for convening a hearing panel in the case of a challenge to the records according to Section 49070.

According to this section, if a parent files a challenge then the superintendent or the governing board may assemble a hearing panel that may consist of the following people to assist in deliberation:

- (1) The principal another public school
- (2) A certificated employee appointed by the school or parent
- (3) A parent appointed by the superintendent or by the governing

board of the district

The hearing panel will be provided with verbatim copies of all information and will disclose their findings to either the superintendent or the governing board, depending on who is officially assessing the claims.

Section 49072

This section establishes a parent's right to include a statement in the records about any disciplinary action taken against their child by any school district employee.

What should be clear is that education records are official documents governed by both state and federal law. If you believe that a records challenge is appropriate, the presentation of your case can often be complicated involving witnesses and evidence. Consider seeking legal advice if you believe that the information placed in your child's file should be removed based on the factors above. Pay close attention to the time lines listed above as well.