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Fresno USD DIVISION OF HUMAN RESOURCES  
HR 5100.3  
PERSONNEL FILES – REMOVAL OF DEROGATORY INFORMATION

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**A. Classification of Records – California Code of Regulations**

Administrative regulations governing the maintenance of documents in California public schools are found at California Code of Regulations, Title 5 (“Title 5”) sections 16020 through 16027. Title 5 requires a school district superintendent to annually review documents and papers originating during the prior school year and classify them into the following categories:

Class 1:	Permanent
Class 2:	Optional
Class 3:	Disposable

This task must be performed by January 1 of each year (but see the discussion of Optional Records Below).

Records still in use (“Continuing Records”) are not classified until they are no longer in any use. A Continuing Record is not to be destroyed until the fourth year after it has been classified as Class 3-Disposable. (California Code of Regulations, Title 5, subsections 16022 & 16026)

Microfilm copy of an original record is classified as Class 1-Permanent. The original record, unless classified as Class 2-Optional, may be classified as Class 3-Disposable and then be destroyed in accordance with this chapter and as long as the conditions of this chapter are met. (California Code of Regulations, Title 5, subsection 16022)

1. Permanent Records

Title 5, section 16023, subdivision (c) (1) (A) defines permanent record to include “all detail records relating to employment, assignment, amounts and dates of service rendered, termination or dismissal of an employee in any position, sick leave record, rate of compensation, salaries or wages paid, deductions of withholdings made and the person or agency to whom such amounts were paid.” (California Code of Regulations, Title 5, subsection 16023, subdivision (c) (1) (A).)

“Information of a derogatory nature as defined in Education Code section 44031 shall be Class 1 – Permanent only after it becomes final.” Information of a derogatory nature as defined in Education Code Section 44031 shall be Class-e-Disposable if prior to the effective date of this section the document was subject to grievance process and was not sustained. (See No. 4, Penalties for Improper Destruction of Records, below)

Education Code section 44031 defines what kinds of material may be placed in an employee’s official personnel file and how such placement is to occur, especially with regards to derogatory information. (See HR Manual Section P - Personnel File)

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<sup>1</sup> The district may decide to put its files on microfilm. If it does so, then microfilm becomes Class 1-Permanent and the original documents become Class 3 Disposable unless they are already classified as Class 2-Optional. The microfilm must be of a type approved by the United States Bureau of Standards and the superintendent must attach a signed and dated certification of compliance with the provisions of Section 1531 of the Evidence Code. (Cal.Code Regs., tit. 5, subsection 16022.)

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**Class 1 – Permanent records must be retained indefinitely** unless microfilmed in accordance with Section 16022(c).

The District must retain either the original document or the exact duplicate of the original where law mandates the original be filed elsewhere.

2. Optional Records

Class 2 – Optional records are those deemed worth keeping but not classified as Class 1 – Permanent. They are to be reclassified at a later date and retained until reclassified as Class 3- Disposable. If the superintendent and the governing board agree to postpone classification of documents after the January 1<sup>st</sup> annual deadline specified in California Code of Regulations, Title 5, subsection 16022, then all records of the previous year must be classified as Class 2 – Optional pending further review and classification within one year.

3. Disposable Records

Class 3 – Disposable records are records not classified as Class 1 – Permanent and Class 2 – Optional. This list includes, but is not limited to, records Basic to Audit, including average daily attendance, warrants, ledger sheets, and cancelled checks and stubs, and detail records used in the preparation of any other report.

No Class 3 – Disposable records may not be destroyed until after the third July 1 succeeding the completion of the annual audit required by Education Code Section 41020 (required to take place no later than the first day of May of each fiscal year) or 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. (California Code of Regulations, Title 5, subsection 16026.)

In any event, no Class 3– Disposable record is to be destroyed for three years. Section 16027 states that “unless otherwise specified in this chapter, all Class – 3 Disposable records shall be destroyed during the third school year after the school year in which they originated (e.g. 1976-1977 records may be destroyed after July 1, 1980).” (California Code of Regulations, Title 4, subsection 16027.)

4. Penalties for Improper Destruction of Records

Government Code section 6200 mandates imprisonment for up to four years for any officer who willfully destroys public records. The penalties for improper destruction of records are severe. Hence, the District should err on the side of preserving records that are arguably Class 1-Permanent.

In conclusion, personnel files are considered Class 1-Permanent and must be retained indefinitely. Derogatory information cannot be classified as Class 1-Permanent until the information becomes final, that is, when the time for filing a grievance has lapsed, or an objection to the derogatory materials has been sustained in the grievance process. (California Code of Regulations, Title 5, subsection 16023 subdivision(c)(1)(B))

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**B. Personnel Records – California Government Code**

The removal and/or destruction of a permanent record which resides in an employee personnel file would violate the provisions of Government Code section 6200, which is entitled “theft, destruction, alteration, etc. by custodial officer.” The relevant portions of section 6200 are as follows:

Every officer having the custody of any record...or of any paper or proceeding of any court, filed or deposited in any public office, or placed in his or her hands for any purpose, is punishable by imprisonment pursuant to Subdivision (h) of Section 1170 of the Penal Code for two, three, or four years if, as to the whole or any part of the record...or paper or proceeding, the officer willfully does or permits any other person to do any of the following:

- a. Steal, remove, or secrete.
- b. Destroy, mutilate, or deface.
- c. Alter or falsify.

The language of the statute could be construed to apply only to court documents. However, courts have applied section 6200 broadly to include most public documents. Section 6200 covers only public records<sup>2</sup> as defined by section 6252 of the Government Code that states:

‘Public Records’ includes any writing containing information relating to the conduct of the public’s business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics...

The Attorney General has ruled that since it was “necessary and convenient”<sup>3</sup> to have personnel files in order to carry out public duties, as such they “related to the public business”<sup>4</sup> and that “the conduct of a public school system is directly affected by the conduct of its employees.” Thus, the Attorney General reasoned, the documents were public records and could not be destroyed. Further, since they were public documents, they were covered by section 6200 of the Government Code. The Attorney General was also swayed by section 6254, subdivision (c) of the Government Code, noting that personnel files were specifically exempt from public inspection under the Public Records Act, reasoning that the Legislature would not have included personnel file in the list of exemption if they were not public records.

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2 (58 Ops.Cal.Atty.Gen. 422, 425 (1975).)

3 (58 Ops.Cal.Atty.Gen., *supra*, 422, 425.)

4 (*Id.*)