



SLS HANDBOOK

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Memo 1

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MAINTENANCE, RETENTION, AND INSPECTION OF PERSONNEL RECORDS

Frequently, concerns regarding the requirements for personnel record maintenance, retention, and employee requests for inspection arise. This memorandum addresses issues such as which documents should be included within an employee personnel file, how long personnel records should be retained, and what the expectations are as they relate to employee requests to inspect documents pertaining to their current or former employment with the District.

Maintenance of Personnel Records

Documents that should be included within a personnel file:

The following list contains examples of documents that generally should be included within a personnel file. Note that this list is not exhaustive, and the documents may vary by district.

- Benefits/retirement/beneficiary forms;
- Pre-employment references;
- Credential/licensing documents;
- Transcripts;
- New hire forms;
- Job application/resume;
- Offer letter and acceptance;
- Payroll authorization forms;
- Education and training notices and records;
- Performance evaluations;
- Attendance records;

- Disciplinary/derogatory information that has been issued in accordance with Education Code section 44031;
- Acknowledgements signed by the employee (e.g. child abuse reporting requirements, oath and affirmation of allegiance, Hepatitis B vaccine declination, drug and alcohol testing policy, STRS notice, sexual harassment policy, acceptable use policy, etc.);
- Notices issued pursuant to law (E.g., notice of layoff, notice of release from position requiring an administrative or supervisory credential, etc.);
- Documentation affecting the employee's employment and terms and condition of employment, such as rate of pay, schedule and work location;
- Record of district property issued to employee;
- Requests for transfer;
- Wage attachment/garnishment notices;
- W-4 forms;
- Verification of employment/salary.

It should be noted that the following documents should be contained in the personnel file, but the employee has no right of access to the document(s): Letter(s) of reference, records that were obtained prior to the employee's employment, ratings or reports prepared by identifiable examination committee members, and records obtained in connection with a promotional examination.¹

There are a variety of documents that *may* be included in a personnel file, but some districts may choose not to include them for a variety of reasons. Examples include awards and letters complimenting the employee's performance.

Documents that should be kept in a separate file in HR (not in the personnel file):

The following are examples of the types of documents that should not be included within a personnel file. These documents must be maintained in accordance with the District's records retention and destruction schedule, but should be kept in a location separate from the personnel file.

- I-9 Forms;
- EEOC/DFEH charge of discrimination and related documents;
- Grievances filed by the employee and related documents;
- Workers' compensation claims and related documents;
- Medical information (including leave forms that contain medical information concerning an employee or an employee's family members).²

¹ California Labor Code section 1198.5(h); California Education Code section 44031.

² California Civil Code section 56.20. "Medical information" is defined as "any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan,

Retention of Personnel Records

A variety of timelines come into play in retaining employment-related documents, and, frequently, questions arise as to which documents must be retained, which may be retained, and which can be destroyed, as well as the length of time documents must be kept. These issues inevitably arise when employees move offices, storage capacity is running low, or when current or former employees make requests for inspection and copying of personnel files. Districts should check their records retention policies to determine if a particular retention schedule has been adopted for the record at issue.

Classes of Documents

The California Code of Regulations provides for three different classes of records, which fall in either the permanent, optional, or disposable categories. Prior to January 1, the Superintendent or designee is required to review the prior year's records and classify them as either Class 1 - Permanent, Class 2 - Optional, or Class 3 - Disposable.³ Note that records of a continuing nature (active or useful for administrative, legal, fiscal, or other purposes over a period of years) cannot be classified until such usefulness has ceased.⁴

Class 1 - Permanent Records

The original of the following records, or an exact copy where the original is required by law to be filed with another agency, constitutes Class 1 - Permanent records that must be maintained indefinitely. Those records are as follows:

- (c) Personnel Records
 - a. Employees.
 - i. 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 or withholdings made and the person or agency to whom such amounts were paid. In lieu of the detail records, a complete proven summary payroll record for every employee of the school district containing the same data may be classified as Class 1 - Permanent, and the detail records may then be classified as Class 3 - Disposable.

pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment.

³ 5 Cal. Code Regs. section 16022.

⁴ *Ibid.*

- ii. Information of a derogatory nature as defined in Education Code section 44031 shall be Class 1 – Permanent only after it becomes final. This information becomes final when:
 - 1. The time for filing a grievance has lapsed, or
 - 2. The document has been sustained by the grievance process.
- iii. Information of a derogatory nature as defined in Education Code section 44021 shall be Class 3 – Disposable if prior to the effective date of this section the document was subject of grievance process and was not sustained.

Note that when the process for making and maintaining an electronic copy is followed, the original hard copy (Class 1 – Permanent) may be reclassified as a Class 3 – Disposable record and scheduled for disposal following the required retention period (usually following the month of July, three years after the school year in which the record was originated.⁵ However, no original record that is basic to any required audit may be destroyed prior to the second July 1st succeeding the completion of the audit.⁶

Finally, a number of state and federal laws also provide retention requirements. Notably, Senate Bill 807 changed the requirements for the retention and preservation of personnel records. Effective January 1, 2022, Districts must retain such records (including payroll records, applications, personnel, membership, or employment referral records and files) for a minimum of four years from the date the records were created or received, or when an employment action—such as termination—was taken, and longer to the extent that a current or former employee has filed a DFEH complaint.⁷ In the event that a DFEH complaint is filed against the District by a current or former employee, the District must retain the personnel records until the action has been fully resolved or until after the statute of limitations for a civil suit has expired, whichever is later.

An argument can be made that personnel records may not be classified as Class 1 – Permanent, and microfilmed, as long as they are records of “continuing nature.” Because most personnel records of current employees may have continuing usefulness to the District, we recommend that the original permanent records of active employees be maintained until the employee is no longer employed, even documents that have already been imaged. In addition, we recommend that districts retain original permanent records of former employees for at least four years after the documents are imaged. These recommendations should ensure that districts are in compliance with the retention requirements of state and federal law.

⁵ 5 Cal. Code Regs. section 16027.

⁶ Cal. Ed. Code section 35254.

⁷ Cal. Govt. Code section 12946.

Inspection of Personnel Records

Labor Code section 1198.5 generally provides when and how employers must respond to employee requests for inspection and copying of personnel files. First, an employee's right to inspect their personnel file applies to both current and former employees (or the employee's representative). Second, as noted above, employers are required to maintain personnel records for at least four years after the separation of employment. Third, the law requires that the employer allow inspection/provide copies of the personnel file within thirty (30) days of when the employer receives a written request. This timeframe may be extended by an additional five days by mutual agreement between the employer and employee or the employee's representative. Note that the employer is not required to make those personnel records or a copy thereof available at a time when the employee is actually required to render service to the employer. Fourth, employers must provide employees with copies of *all* personnel records relating to the employee, rather than just documents the employee signed.

Labor Code section 1198.5 further specifies the location where the inspection must take place and provides that an employer-provided form shall be given to the employee or the employee's representative once the employer knows the employee would like to inspect their file. However, to the extent a lawsuit is pending respective a personnel matter against the current or former employer, or a collective bargaining agreement expressly provides for a procedure for the inspection and copying of personnel records, Labor Code section 1198.5 does not control.

As noted above, a request to inspect/copy a personnel file may be made by an employee's "representative," which is a person authorized, in writing, to act on behalf of the employee. A union representative or attorney would meet the definition of "representative." An employer need not respond to more than fifty requests by a "representative" in one calendar month.

For current employees, the inspection of records or copies must be provided at the location where the employee normally reports to work, or at another mutually-agreeable location. If the employee is required to go to a different location, the employee may do so only if the employee suffers no loss of compensation. Former employees, on the other hand, may inspect or receive copies of records where the employer stores the records, unless otherwise mutually agreed to in writing. Former employees may receive copies of their personnel records by mail if they reimburse the employer for the actual cost of postage. Employers are required to respond to only one request per year from a former employee. An employee/former employee is entitled to receive copies of the personnel records, at a charge that may not exceed the employer's actual cost of reproduction.

Where a former employee was terminated for workplace harassment or violence, an employer can make the personnel records available at a location other than the workplace that is

within a reasonable driving distance of the former employee's residence, or mail copies of the records to the former employee.

Prior to producing personnel records for inspection or copying, an employer is permitted to redact the names of any nonsupervisory employee(s) that may appear in any of the documents contained within the personnel file.

Conclusion

Districts must meet a number of requirements as they relate to maintenance, retention, and requests for inspection of personnel files. If you have any questions about what documents should be included within employee personnel files, which documents should be retained and for how long, or what the law requires with respect to employee requests to inspect personnel files, please feel free to contact Schools Legal Service.

~Julia K. Vlahos