

SECTION XII

RECORDS ACCESS AND MANAGEMENT POLICY

BF RECORDS ACCESS AND MANAGEMENT

A POLICY ESTABLISHING A RECORDS ACCESS AND MANAGEMENT POLICY FOR THE SAN JUAN COUNTY SCHOOL DISTRICT.

BE IT RESOLVED by the Board of Education of the San Juan County School District as follows:

SECTION 1. GENERAL PURPOSE

- A. The San Juan County School District adopts this Policy to establish guidelines for open government information, recognizing the need to maintain and preserve accurate records, provide public access to public records and preserve the right of privacy of personal data collected or received by the District.

SECTION 2. DISTRICT POLICY

- A. In adopting this Policy, the District recognizes the enactment of Government Records Access and Management Act (Sections 63-2-101 et seq., Utah Code annotated 1953) and the application of that act to the District records. The purpose of these policies is to conform to Section 63-2-701 which provides that each political subdivision may adopt a Policy relating to information practices including classification, designation, access, denials, segregation, appeals, management, retention and amendment of records. The intent of this Policy is to provide modifications to the general provisions of State law, were allowed, to best meet the public needs, operation, management capabilities and resources of the district.

SECTION 3. COMPLIANCE WITH STATE LAW

- A. In adopting this Policy, the District recognizes that the following sections of the Government Records Access Management Act apply to the District and adopts by reference these provisions as part of this policy. Any inconsistency or conflict between this Policy and the following reference statues shall be governed by the statute.

Part 1 General Provisions

63-2-101	Short Title
63-2-102	Legislative intent
63-2-103	Definitions
63-2-104	Administrative procedures Act
63-2-105	Confidentiality agreements

Part 2 Access to Records

63-2-201	Right to inspect records and receive copies of records
63-2-206	Access to private, controlled and protected documents

Part 2 (ct)	63-2-205 63-2-206	Denials Sharing records
Part 3	<u>Classification</u>	
	63-2-301 63-2-302 63-2-303 63-2-304 63-2-305 63-2-306 63-2-307 63-2-308	Records that must be disclosed Private records Controlled records Protected records Procedure to determine classification Duty to evaluate records and make designations and classifications Segregation of records Business confidentiality claims
Part 4	<u>Claims</u>	
Part 5	<u>State Records Committee</u>	
Part 6	<u>Accuracy of Records</u>	
	63-2-601 63-2-602 63-2-603	Rights of individuals on whom data is maintained Disclosure to subject of records - Context of use Request to amend
Part 7	<u>Applicability to Political Subdivisions: The Judiciary and the Legislature</u>	
	63-2-701	Political Subdivisions to enact ordinances in compliance with chapter
Part 8	<u>Remedies</u>	
	63-2-801 63-2-802 63-2-803 63-2-804	Criminal penalties Injunction - Attorneys' Fees No liability for certain decisions of a governmental entity Disciplinary action
Part 9	<u>Archives and Records Service</u>	
	63-2-905 63-2-907	Records declared property of the State - Disposition Right to replevin
<i>delete</i> Part 10	<u>Other</u>	
	63-30-10.6	Attorneys' fees for records request

SECTION 4. DEFINITIONS

As used in this Resolution, the following definitions shall be applicable:

- A. "Act" shall refer to the Government Records Access and Management Act, 63-2-1, et seq., Utah Code Annotated 1953, as amended.
- B. "Superintendent" means the Superintendent of the San Juan School District as defined in the District Policy Manual.
- C. "District" shall refer to the San Juan School District or any public or private entity which pursuant to contract with the District has agreed to produce and maintain public District records.
- D. "Computer software program" means the series of instructions or statements that permit the functioning of a computer system in a manner designed to provide storage, retrieval, and manipulation of data from the computer system, and any associated documentation, manuals, or other source materials explaining how to operate the software program. "Software" does not include the original data or recorded which is manipulated by the software.
- E. "Controlled" records shall be those defined as controlled under the provisions of the Act.
- F. "Data" shall refer to individual entries (for example, birth date, address, etc.) in records.
- G. "Dispose" means to destroy, or render irretrievable or illegible, a record or the information contained in it by any physical, electronic, or other means, including unauthorized deletion or erasure of electronically recorded audio, visual, non-written formats, data processing, or other records.
- H. "Non-public" records shall refer to those records defined as private, controlled, or protected under the provisions of the Act.
- I. "Private" records shall refer to those records classified as private under the provisions of the Act.
- J. "Protected" records shall refer to those records classified as protected under the provisions of the Act.
- K. "Public" records shall refer to those records which have not been classified as non-public in accordance with the provisions of the Act.
- L. (1) "Record" means all books, letters, documents, papers, maps, plans, photographs, films, cards, tapes, recordings, or other documentary materials, and electronic data regardless of physical form or characteristics, prepared, owned, used, received, or retained by the District where all the information in the original is reproducible by some mechanical, electronic, photographic or other means.

- (2) "Record" does not mean:
- (a) Temporary drafts or similar materials prepared for the originator's personal use or prepared by the originator for the personal use of a person for whom he is working;
 - (b) Materials that are legally owned by an individual in his private capacity;
 - (c) Materials to which access is limited by the laws of copyright or patent;
 - (d) Junk mail or commercial publications received by the District or by an officer or employee of the District;
 - (e) Personal notes or daily calendars prepared by any District employee for personal use or the personal use of a supervisor or such notes, calendars, or internal memoranda prepared for the use of an officer or agency acting in a quasi-judicial or deliberative process or pursuant to matters discussed in a meeting closed pursuant to Utah Open Meeting Act; or
 - (f) Proprietary computer software programs as defined in subsection C. above that are developed or purchased by or for the District for its own use.

SECTION 5. PUBLIC RIGHT TO RECORDS

- A. Members of the public shall have the right to see, review, examine and take copies, in any format maintained by the District, of all District governmental records defined as "public" under the provisions of this Policy, upon the payment of the lawful fee and pursuant to the provisions of this Policy and the Act.
- B. The District has no obligation to create a record or record series in response to a request from a member of the public, if the record requested is not otherwise regularly maintained or kept.
- C. When a record is temporarily held by a custodial District agency, pursuant to that custodial agency's statutory functions, such as records storage, investigation, litigation or audit, the record shall not be considered a record of the custodial agency for the purposes of this Policy. The record shall be considered a record of the District and any requests for access to such records shall be directed to the District, rather than the custodial agency, pursuant to these procedures.

SECTION 6. PUBLIC, PRIVATE, CONTROLLED AND PROTECTED RECORDS

- A. Public records shall be those District records as defined in the Act, 63-2-201 (UCA 1953, as amended). Public records shall be made available to any person. All District records are considered public unless they are (1) expressly designated, classified, or defined otherwise by the District in accordance with policies and procedures established by this Policy, (2) are so designated, classified or defined by the Act, or (3) are made non-public by other applicable law.

- B. Private records shall be those District records classified as "private", as defined in the Act 63-2-302 (UCA 1953, as amended) and as designated, classified, or defined in procedures established pursuant to this Policy. Private records shall be made available to the following persons: The subject of the record, the parent or legal guardian of a minor who is the subject of the record, the legal guardian of an incapacitated individual who is the subject of the record, any person who has a power of attorney or a notarized release from the subject of the record or his legal representative, or any person possessed of an serving a legislative subpoena or a court order issued by a court of competent jurisdiction.
- C. Controlled records shall be those District records classified as "controlled", as defined in the Act, 63-2-303 (UCA 1953, as amended) and as designated, classified, or defined in procedures established in this Policy. Controlled records shall be made available to a physician, psychologist or licensed social worker who submits a notarized release from the subject of the record or any person presenting a legislative subpoena or a court order signed by a judge of competent jurisdiction.
- D. Protected records shall be those District records classified as "protected", as defined in the Act, 63-2-304 (UCA 1953, as amended) and as designated, classified or defined in procedures established in this Policy. Protected records shall be made available to the person who submitted the information in the records, to a person who has power of attorney or notarized release from any persons or governmental entities whose interests are protected by the classification of the record, or to any person presenting a legislative subpoena or a court order regarding the release of the information and signed by a judge of competent jurisdiction.
- E. Under circumstances set out by the Act, it may be appropriate to disclose non-public records to persons other than those set out in this section. The Superintendent, consistent with the Act, and upon the advice of the District's Attorney.

SECTION 7. PRIVACY RIGHTS

- A. The District recognizes and upholds the personal right of privacy retained by persons who may be the subject of governmental records. The District also recognizes that the Act and the Utah case law establish a presumption that governmental records will generally be considered open and public, with certain specific exceptions. In circumstances where a record's public or non-public status is not specifically established by the Act or another statute, by this Policy, or by policies established or designations made under this Policy, the public's right to access and the record subject's right of privacy must be compared. In accordance with decisions of the Utah Supreme must be compared. In accordance with decisions of the Utah Supreme Court, District records which have not been specifically made public by statue and which refer to named or readily identifiable individuals which deal with matters of a delicate nature which could engender shame or humiliation in the subject of that record, in accordance with accepted standards to social propriety, shall generally not be classified as public records and release thereof may constitute a clearly unwarranted invasion of privacy, in accordance with the Act and procedures established in this Policy. Under circumstances and procedures established by this Policy, certain items of data may be rendered non-public, although other items of data in the record, or the record itself may be classified public.

- B. The District may, as determined appropriate by the Superintendent, notify the subject of a record that a request for access to the subject's records has been made.
- C. The District may require that the requester of records provide a written release, notarized with thirty (30) days before the request, from the subject of the records in question before access to such records is provided.

SECTION 8. DESIGNATION, CLASSIFICATION AND RETENTION

- A. All District records and records series, of any format, shall be designated, classified and scheduled for retention according to the provisions of the Act and this policy. Any records or record series generated in the future shall also be so designated, classified and scheduled for retention. Records designation classification and scheduling for retention shall be conducted under the supervision of the District Records Officer.

SECTION 9. PROCEDURES FOR RECORDS REQUEST

- A. Under circumstances in which a District is not able to immediately respond to a records request, the requester shall fill out and present to the District a written request on forms provided by the District. The date and time of the request shall be noted on the written request form and all time frames provided under this Policy shall commence from that time and date. Requesters of non-public information shall adequately identify themselves and their status prior to receiving access to non-public records.
- B. The District may respond to a request for a record by approving the request for a record by approving the request and providing the records, denying the request, or such other appropriate response as may be established by policies and procedures. If a request is denied in whole or in part, the agency shall provide a notice of denial to the requester. The denial notice shall include information regarding the appeals process and such other information as may be required by this Section and the Act.
- C.
 - (1) In most circumstances and excepting those eventualities set out below, the District shall respond to a written request for a public record within ten business days after that request.
 - (2) Extraordinary circumstances shall justify the District's failure to respond to a written request for a public record within ten business days and shall extend the time for response thereto to that time reasonably necessary to respond to the request, as determined by the Records Officer. Extraordinary circumstances shall include but not be limited to the following;
 - (a) Some other governmental entity is currently and actively using the record requested;
 - (b) The record requested is for either a voluminous quantity of records or requires the District to review a large number of records or perform extensive research to locate the materials requested;

- (c) The District is currently processing either a large number of records requests or is subject to extraordinary seasonal work loads in the processing of other work;
 - (d) The request involves an analysis of legal issues to determine the proper response to the request;
 - (e) The request involves extensive editing to separate public data in a record from that which is not public; or
 - (f) Providing the information request requires computer programming or other format manipulation.
- (3) When a record request cannot be responded to within ten (10) days, the Records Officer shall give the requester an estimate of the time required to respond to the request.
- D. The failure or inability of a District to respond to a request for a record within the time frames set out herein, or the District's denial of such a request, shall give the requester the right to appeal as provided in Section II.
- E. Any District record which is subject to pending litigation or audit or has been requested in accordance with this Policy and the Act, that is disposable by approved retention schedules, may not be disposed of until the litigation or audit has been resolved or the request is granted and fulfilled, or sixty days after the request is denied if no appeals are filed, or sixty days after all appeals are completed, pursuant to Section II.
- F. In response to a request for access, the District may redesignate or reclassify the record or segregate data in the requested record in accordance with this Section and the Act.

SECTION 10. FEES

A. Applicable fees for the processing of information requests under this Policy shall generally be set at actual cost or as otherwise established by policies adopted under this Policy. The District will charge the following fees for requests relating to the Government Records Access and Management Act:

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| 1. | Reviewing a record to determine whether it is subject to disclosure | No Charge |
| 2. | Inspection of records by requesting person | No Charge |
| 3. | Copy Fees | \$1 for the first page and \$.25 per page thereafter (District prepared copies) |
| 4. | Computer Disk | Actual Cost (including overhead and time of District staff in preparation of information request) |

5. Other Forms

Actual Cost (including overhead and time of District staff in preparation of information request)

6. Miscellaneous Fees

Actual Cost (including overhead and time of District staff in preparation of information request)

SECTION 11. APPEAL PROCESS

- A. Any person aggrieved by the District's denial or claim of extraordinary circumstances may appeal the determination within 30 days after notice of the District's action to the District Superintendent by filing a written notice of appeal. The notice of appeal shall contain the petitioner's name, address, phone number, relief sought and if petitioner desires, a short statement of the facts, reasons and legal authority for the appeal.
- B. If the appeal involves a record that is subject to business confidentiality or affects the privacy rights of an individual, the District Superintendent shall send a notice of the requester's appeal to the affected person.
- C. The District Superintendent shall make a determination on the appeal within 30 days after receipt of the appeal. During this 30 day period, the District Superintendent may schedule an informal hearing or request any additional information deemed necessary to make a determination. The District Superintendent shall send written notice to all participants providing the reasons for the District Superintendent's determination.
- D. In addition, if the District Superintendent affirms the denial in whole or in part, the denial shall include a statement that the requester has a right to appeal the denial to the District's Board of Education within thirty (30) days at the next scheduled meeting.
- E. The person may file a written notice of appeal to the Board of Education to be heard at the next scheduled meeting of the Board. If there is not meeting scheduled in the next thirty days, the Board of Education shall schedule a meeting for the purpose of hearing the appeal. The final decision of the Board of education shall be by majority vote of a quorum of the Board. The Board shall prepare a written decision outlining their final determination and reasons for the final determination.
- F. IF the Board of Education affirms the denial, in whole or in part, the person may petition for judicial review in district court as provided in Section 63-2-404 UCA

SECTION 12. REASONABLE ACCOMMODATION

- A. Reasonable accommodations regarding access to governmental records shall be provided to persons with disabilities in accordance with the Americans with Disabilities Act upon request of the applicant.

SECTION 13. RECORDS AMENDMENTS

- A. Government records held by the District may be amended or corrected as needed. Requests for amendments, corrections, or other changes shall be made in writing to the District having custody of the records and setting forth, with specificity, the amendment or correction requested. When an amendment or correction of a government record is made, both the original record and the amended or corrected record shall be retained, unless provided otherwise by the Act or other State or Federal law.

SECTION 14. PENALTIES

- A. District employees who knowingly refuse to permit access to records in accordance with the Act and this Policy, who knowingly permit access to non-public records, or who knowingly, without authorization or legal authority, dispose of, alter, or remove records or allow other persons to do so in violation of the provisions of the Act, this Policy or other law or regulation may be subject to criminal prosecution and disciplinary action, including termination.
- B. In accordance with the Act, neither the District nor any of its officers or employees shall be liable for damages resulting from the release of a record where the requester presented evidence of authority to obtain a record, even if it may be subsequently determined that the requester had no such authority.

SECTION 15. RECORDS OFFICER

- A. There shall be appointed a District Records Officer to oversee and coordinate records access, management and archives activities. The Records Officer shall make annual reports of records services activities to the Board of Education. Executive Secretary to the Superintendent of the San Juan School District is hereby designated as the District's Records Officer.

SECTION 16. RECORDS MAINTENANCE

- A. Records maintenance procedures shall be developed to ensure that due care is taken to maintain and preserve District records safely and accurately over the long term. The Records Officer shall be responsible for monitoring the application and use of technical processes in the creation, duplication and disposal of District records. The Records Officer shall monitor compliance with required standards of quality, permanence, admissibility pertaining to the creation, use and maintenance of records.
- B. All District records shall remain the property of the District unless federal or state legal authority provides otherwise. Property rights to District records may not be permanently transferred from the District to any private individual or entity, including those legally disposable obsolete, District records. This prohibition does not include the providing of copies of District records otherwise produced for release or distribution under this Section.

- C. Custodians of any District records shall, at the expiration of their terms of office, appointment or employment, deliver custody and control of all records kept or received by them to their successors, supervisors, or to the District Records Officer.

**ADOPTED BY THE BOARD OF EDUCATION OF THE SAN JUAN SCHOOL DISTRICT
THIS 17TH DAY OF MAY, 1993.**