

AP 7145 PERSONNEL FILES

References:

Education Code Section 87031;
Labor Code Section 1198.5

NOTE: This procedure is legally advised. This is often a subject of bargaining for represented employees, and collective bargaining contracts will prevail for those employees.

Each employee has one official personnel file, which is private, accurate, complete, and permanent.

Each employee has the right to inspect his/her personnel file pursuant to the Labor Code. The review shall take place during normal business hours and the employee shall be released from duty for this purpose without any salary reduction. **The employee shall not have the right to inspect personnel records at a time when the employee is actually required to render services to the District.** This review shall be in the presence of Human Resources representative.

All attempts will be made to produce the personnel file immediately upon request, and it will be made available within three working days of the employee's written request to review his/her personnel file.

Information of a derogatory nature shall not be entered into an employee's personnel records unless and until the employee is given notice and an opportunity to review and comment on that information. The employee shall have the right to have his/her own comments attached to any derogatory statement.

The employee is entitled to one copy of his/her personnel records at no cost per twelve-month period. Subsequent copies may be provided for a minimal copying fee.

Nothing in this procedure shall entitle an employee to review ratings, reports, or records that (a) were obtained prior to the employment of the person involved, (b) were prepared by identifiable examination committee members, or (c) were obtained in connection with a promotional examination or review.

Further information on employee rights regarding personnel files can be found in the respective employee collective bargaining agreement.

NOTE: *This procedure is **legally advised** and recommended by the Policy and Procedure Service and its legal counsel. The language in **green ink** was added on July 30, 2013 during the review with Wyman, David, Diana, and Kit.*

Date Approved:

(This is a new procedure recommended by the Policy and Procedure Service)

Legal Citations for AP 7145

Education Code Section 87031, Labor Code Section 1198.5

87031. (a) Every employee has the right to inspect personnel records pursuant to Section 1198.5 of the Labor **Code**.

(b) In addition to subdivision (a), all of the following shall apply to an employee of a school district:

(1) Information of a derogatory nature shall not be entered into an employee's personnel records unless and until the employee is given notice and an opportunity to review and comment on that information. The employee shall have the right to enter, and have attached to any derogatory statement, his or her own comments. The review shall take place during normal business hours and the employee shall be released from duty for this purpose without salary reduction.

(2) The employee shall not have the right to inspect personnel records at a time when the employee is actually required to render services to the district.

(3) Nothing in this section shall entitle an employee to review ratings, reports, or records that (A) were obtained prior to the employment of the person involved, (B) were prepared by identifiable examination committee members, or (C) were obtained in connection with a promotional examination.

1198.5. (a) Every employee has the right to inspect the personnel records that the employer maintains relating to the employee's performance or to any grievance concerning the employee.

(b) The employer shall make the contents of those personnel records available to the employee at reasonable intervals and at reasonable times. Except as provided in paragraph (3) of subdivision

(c), the employer shall not be required to make those personnel records available at a time when the employee is actually required to render service to the employer.

(c) The employer shall do one of the following:

(1) Keep a copy of each employee's personnel records at the place where the employee reports to work.

(2) Make the employee's personnel records available at the place where the employee reports to work within a reasonable period of time following an employee's request.

(3) Permit the employee to inspect the personnel records at the location where the employer stores the personnel records, with no loss of compensation to the employee.

(d) The requirements of this section shall not apply to:

(1) Records relating to the investigation of a possible criminal offense.

(2) Letters of reference.

(3) Ratings, reports, or records that were:

(A) Obtained prior to the employee's employment.

(B) Prepared by identifiable examination committee members.

(C) Obtained in connection with a promotional examination.

(4) Employees who are subject to the Public Safety Officers Procedural Bill of Rights, Chapter 9.7 (commencing with Section 3300) of Division 4 of Title 1 of the Government **Code**.

(5) Employees of agencies subject to the Information Practices Act of 1977 (Title 1.8 (commencing with Section 1798) of Part 4 of Division 3 of the Civil **Code**).

(e) The **Labor** Commissioner may adopt regulations that determine the reasonable times and reasonable intervals for the inspection of records maintained by an employer that is not a public agency.

(f) If a public agency has established an independent employee relations board or commission, an employee shall first seek relief regarding any matter or dispute relating to this section from that board or commission before pursuing any available judicial remedy.

(g) In enacting this section, it is the intent of the Legislature to establish minimum standards for the inspection of personnel records by employees. Nothing in this section shall be construed to prevent the establishment of additional rules for the inspection of personnel records that are established as the result of agreements between an employer and a recognized employee organization.