

# *Automation & Digital Integration Balancing Compliance & Innovation*

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**Presented by:**

**Dr. Mercedes Gutierrez**

***Cerritos CCD; VP of Human Resources***

**Joshua Taylor**

***Senior Associate***

**MCDUGAL BOEHMER FOLEY  
LYON MITCHELL & ERICKSON**  
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# Automation & Digital Integration

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**ACHRO EEO**  
Association of Chief Human Resource Officers Equal Employment Officers



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## Presentation Overview

1. The Cerritos College Journey
2. Data Security Obligations
3. Disclosure Obligations
4. Best Practices



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# Cerritos College

## and the Storage Closet of DOOM



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## The Cerritos College Journey

PAST



FUTURE



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## Buried Treasure?

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## Microfiche?

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# Auditing, Scanning, Workflows, OH MY!

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## Record Retention

TITLE 5 REQUIREMENTS FOR CLASSIFICATION & RETENTION

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## Records Retention Obligation

Obligations Arise Under...	To Keep Certain Records...
Title VII of the Civil Rights Act of 1964	Personnel Files
Americans with Disabilities Act	Student Records
Age Discrimination in Employment Act	Applicant Records
CA Fair Employment and Housing Act	Requests for Accommodation
Education Code	Hiring/Selection Records
Title 5 Code of Regulations	Board Agendas and Minutes
Family Education Rights/Privacy Act	Financials
EU "General Data Protection Regulation"	Public Contracting Documents
& More!	& More!



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## What Are Records

“... all records, maps, books, papers, and documents of a school district required by law to be prepared or retained or which are prepared or retained as necessary or convenient to the discharge of official duty.”

(5 CCR § 16020.)



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# Retention Periods

## Continuing Records

- Records that remain active and useful for years; “classified” after usefulness ceases

## Class-1 “Permanent”

- Budgets, financials, Board minutes, student/personnel records, and property records.

## Class-2 “Optional”

- “Worthy of preservation” but not otherwise designated a Class-1 record

## Class-3 “Disposable”

- Records used to prepare other records, e.g. attendance sheets



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# Electronic Conversion



“Whenever an original Class 1-Permanent record is photographed, microphotographed, or otherwise **reproduced on film or electronically**, the copy thus made is hereby classified as Class 1-Permanent. The original record, unless classified as Class 2-Optional, may be classified as Class 3-Disposable, and may then be destroyed...” subject to conditions.

(5 C.C.R. § 59022(e).)



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# Cerritos College

and the Storage Closet  
of Worthless Paper!

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# Federal Privacy Laws

LET'S MAKE THIS MORE COMPLEX

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## Gramm-Leach-Bliley Act (“GLBA”)

- ▶ When a college engages in activities to exchange, transfer, or safeguard money, e.g. financial activities, it is considered a **“financial institution”** as defined by *GLBA*.
- ▶ Department of Education program participation agreements require districts to “ensure that all Federal Student Aid applicant information is protected from access by or disclosure to unauthorized personnel.”
- ▶ As a participating entity for student aid, the district must comply with the *GLBA*.



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## Gramm-Leach-Bliley Act (“GLBA”)

### Privacy Rule:

Notice about privacy policies and practices, notice of circumstances in which the institution may disclose information to third parties, and “opt out” for certain disclosures.

Compliance with FERPA = compliance with GLBA “Privacy Rule.”

(16 C.F.R. § 313.1(b).)

### Safeguard Rule:

Take steps to review and implement policies and procedures intended to safeguard the personally identifiable information of consumers to ensure that the information remains private.

Identify and assess “reasonably foreseeable internal and external risks” to security, confidentiality, and data integrity.



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## Health Insurance Portability and Accountability Act

- HIPAA Privacy Rule applies to Districts that transmit health information electronically in connection with certain administrative and financial transactions.
- HIPAA Privacy Rule applies to health data that is not part of “education record.”



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## Health Insurance Portability And Accountability Act

- ▶ When a school provides health care to students in the normal course of business, such as through its health clinic, it is also a “health care provider” as defined by *HIPAA*.
- ▶ If a school also conducts any covered transactions electronically in connection with that health care, it is then a covered entity under *HIPAA*.
- ▶ As a covered entity, the school must comply with the *HIPAA* Administrative Simplification Rules for Transactions and Code Sets and Identifiers with respect to its transactions.



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## Family Educational Rights and Privacy Act

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Enacted to guarantee **parents** and **students** a certain degree of confidentiality and fundamental fairness with respect to the maintenance and use of student records.

**FERPA**  
Family Educational  
Rights and Privacy Act



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## Family Educational Rights and Privacy Act

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- Parents or eligible students have the right to **inspect** and **review** the student's education records maintained by the school.
- Parents or eligible students have the right to request that a school correct records which they believe to be inaccurate or misleading.



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## FERPA Disclosure Exceptions

FERPA allows disclosure of records without consent under the following conditions:

- School officials with legitimate educational interest;
- Other schools to which a student is transferring;
- Specified officials for audit or evaluation purposes;
- Appropriate parties in connection with financial aid to a student;
- Organizations conducting certain studies for or on behalf of the school;
- Accrediting organizations;
- To comply with a judicial order or lawfully issued subpoena;
- Appropriate officials in cases of health and safety emergencies; and
- State and local authorities, within a juvenile justice system, pursuant to specific state law.



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## Other Federal Laws Relating to Records

- The **Grassley Amendment** (1994) to the Goals 2000: Educate America Act of 1994 details privacy of student participation in surveys, analyses, and evaluations.
- The **Drug Abuse Office and Treatment Act** (1976) protects drug and alcohol treatment records of students kept by any institution receiving federal assistance.
- The **Individuals with Disabilities Education Act** ("IDEA") affects records of students in special education.
- **Title VII of the Civil Rights Act of 1964**, the **Americans with Disabilities Act** ("ADA"), and the **Age Discrimination in Employment Act** ("ADEA") require the retention of personnel documents, including requests for reasonable accommodations, employment application forms, and records concerning hiring and selection for training or apprenticeships.



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# Cerritos College

and the Quest for  
Email Encryption

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A man wearing a dark hat and a jacket is shown from the chest up. He is holding a glowing, golden, spherical object with both hands. The background is dark and textured, possibly a cave or a forest at night. The overall tone is mysterious and dramatic.

## California Laws

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THE DEFAULT RULE

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## California Public Records Act

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- All records of public agencies are **presumed public**, unless an exemption applies.
- The CPRA provides for two different rights of access:
  - 1) Right to inspect public records.
  - 2) Right to prompt availability of copies of public records.

The CPRA was enacted to curb secrecy in government and provide accountability and visibility.



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## California Public Records Act

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The PRA defines “**public records**” as “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.”



Including a microfiche, an orphaned hard-drive, or a forgotten box of disks



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## California Laws Relating to Records

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Article 1, Section 1 of the California Constitution;

California Information Practices Act (California Civil Code § 1798 *et seq.*);



California Education Code Sections 76230 & 76240 *et seq.*;

Student Online Personal Information Protection Act (“SOPIPA”) (California Business & Professions Code § 22584 *et seq.*);

California Consumer Privacy Act of 2018\* (“CCPA”) (Civ. Code § 1798.100 *et seq.*)  
and

California Privacy Rights Act\* (“CPRA”), effective January 1, 2023

\* Not directly applicable to public entities



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## California Education Code Section 76220

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“Community college districts shall establish, **maintain, and destroy** student records according to **regulations** adopted by the Board of Governors of the California Community Colleges. Such regulations shall establish state policy as to what items of information shall be placed into student records...”



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## California Education Code Section 76243

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“A community college or community college district is not authorized to permit access to student records to any person without the written consent of the student or unless pursuant to judicial order...”\*

*\*Subject to multiple exceptions.*



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## California Consumer Privacy Act (“CCPA”) (California Civil Code § 1798.100 *et seq.*)

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Intended to enhance privacy rights and consumer protection for residents of California. The Act provides the right to:

- Know what personal data is being collected about them.
- Know whether their personal data is sold or disclosed and to whom.
- Say no to the sale of personal data.
- Access their personal data.
- Request a business delete any personal information about a consumer collected from that consumer.
- Not be discriminated against for exercising their privacy rights.



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## California Consumer Privacy Act (“CCPA”) (California Civil Code § 1798.100 *et seq.*)

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While CCPA does not **directly apply** to community college districts or other public entities, vendors or contractors of the District who have access to district data may need to comply with CCPA.

Community college districts should ensure that their vendors and contractors are compliant with CCPA.



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## California Information Practices Act

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The Information Practices Act requires public agencies (including community college districts) to notify affected California residents if their personal information has been, or is reasonably believed to have been, acquired by an unauthorized party.

(California Civil Code § 1798 *et seq.*)



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## California Information Practices Act

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To comply with the Information Practices Act, a BREACH NOTICE must be issued and be made:

"in the most expedient time possible and without unreasonable delay"

...after learning of the breach.



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## California Information Practices Act

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While not strictly required of local agencies, California requires businesses that suffer a data breach of this type to provide 12-months of credit monitoring services at no cost to the affected person. (Civ. Code § 1798.82(d)(2)(G).)

If the notice must be mailed to 500 or more California residents as a result of a single breach, the business or agency is required to submit a sample copy of the breach notification to the Attorney General



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# Lessons Learned at Cerritos College

from the Storage Closet  
of DOOM

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## Institutionalize Data Security

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Create an environment where data security is considered on an organization wide level, from the highest levels down.

Ensure policies are legally compliant and in accord with document retention guidelines.

Carefully scrutinize vendor contracts concerning “cloud” services



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## Vendor Considerations

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Data Ownership, particularly for sensitive information.

Data presentation, preferences, & customization



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## Campus Communications

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Transparency with the Campus Community

Everyone is interested when you start manipulating personnel files

Long process, but eventual goals better serve the Campus



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**QUESTIONS?**

**THANKS!**

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