



POLICY 2.041

4-C I recommend that the Board adopt the proposed revised Policy 2.041, entitled 2.041, entitled "Public Records."

[Contact: Nat Harrington, PX 48227.]

Adoption

CONSENT ITEM

- The Board approved development of this revised Policy at the development reading on July 7, 2010.
- The purpose of this policy is to set forth the procedures of this School District (District) for retaining public records and responding to public records requests and subpoenas for documents.
- Revisions include: updated document retention; providing for records holds; designation of records custodians; guidance on responding to routine and non-routine public records requests; updated document access information; updated schedule of fees and service charges; guidance on records related to litigation and employee records; updated guidance on requests for computer data and the redaction of confidential information; and updated guidance on handling document subpoenas.
- The District will provide training to records custodians relating to these procedures.
- All website references have been updated and corrected to short titles.
- This revision also updates statutory references.

POLICY 2.041

PUBLIC RECORDS

Purpose:

1. The purpose of this policy is to set forth the procedures of this School District (District) for retaining public records and responding to public records requests and subpoenas for documents.
2. The term "public records," as defined in Fla. Stat. § 119.011(4 11), ~~includes~~ means "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business" ~~by the Board and of the District School System.~~ Once a document has been finalized and becomes a public record, including while subject to a records hold, it may not be altered or modified unless the altered document has been retained without the alteration. Any intentional alteration of a public record in violation of this policy may be grounds for disciplinary action. [Note that student educational records are governed by School Board Policy 5.50, Fla. Stat. §§ 1002.22 and 1002.221; SBER 6A-1.0955, 34 C.F.R. Part 99, and FERPA--20 USC 1232g, as they may be amended. Student educational records are confidential and exempt from public records disclosure. Fla. Stat. § 1002.221].

Retention:

3. Public District public records shall be maintained in accordance with the District's Retention Schedule (currently available online on the Record's Management Department's web site at [Records Management Department's website](#)), approved under Fla. Stat. § 119.04(4) 021(2)(b) and Fla. Admin. Code § 1B-24.003, or for a longer period per a records hold notification or pursuant to terms of a contract.
 - a. As defined within Fla. Admin. Code § 1B-24.001(3) (j), the record (master) copy of the document that is referenced within the Retention Schedule means the public records specifically designated by the custodian as the official record of the District.
 - b. Records holds are requests to retain all documents until further notice when potential or pending litigation exists, when an audit is being conducted, or when an investigation is occurring.
 - c. If a records hold exists, documents relating to those issues must be retained irrespective of the retention schedule until the records hold is released. The Office of Chief Counsel will notify by written communication the relevant

37 departments of records holds relating to pending or potential litigation of which
38 the office is aware.

39 d. Further, if the employee is aware of pending or potential litigation and no
40 records hold request has yet been made, the employee or his/her supervisor
41 must notify the Office of Chief Counsel. The documents relating to those
42 issues must be retained irrespective of the retention schedule until advised by
43 the Office of Chief Counsel or per the District's retention schedule, whichever
44 period of time is longer.

45 e. Additionally, if the employee is aware of an audit or pending investigation and
46 no records hold request has yet been made, the documents must be retained
47 until the audit or investigation has been completed or per the District's
48 retention schedule, whichever period of time is longer.

49 f. District employees, Board members, and agents are prohibited from creating
50 or allowing to be created public records that cannot be retained as per the
51 retention schedule or a records hold. This prohibition would include, but is not
52 limited to voice mails and sending or receiving text messages, tweets, and
53 instant messages that are official records of the District (or, if transitory, still
54 have administrative value) and relate to official District business.

55 4. **Records Custodians:**

56 a. The Superintendent of Schools has designated the District's Department of
57 Public Affairs (Public Affairs) to be responsible for handling public records
58 requests. This department has designated a person or persons to coordinate
59 such requests. In addition to contacting a particular department or school,
60 copies of public records may be obtained by making a request to Public
61 Affairs. That department shall coordinate the production of records.

62 b. The director of each department and school (principals for schools) must
63 designate a Records Custodian for that department/school to coordinate
64 processing and responding to any public records requests received by that
65 department/school and then notify Public Affairs of the identity of that
66 department's/ school's Records Custodian and keep the list updated for any
67 replacement.

68 **Public Records Requests:**

69 5. ~~Persons may request public records to the District either verbally or in writing.~~
70 ~~Requesters are encouraged to submit requests in writing to expedite accurate~~
71 ~~processing of their requests. Requests should be sufficiently detailed to identify~~
72 ~~the documents sought to be examined or copied.~~

73 a. Although requesters may be encouraged to submit requests in writing to

74 minimize any misunderstanding as to the nature of the request, it is not
75 permissible to insist or require that the request be made in writing or to ask
76 why the information is being requested. Further, it is not permissible to ask the
77 identity of the requester or for background information unless the District is
78 required by statute to obtain the information before release of the record. If the
79 request is for personnel records, the identity of the requester is required and
80 the District must record the requester's name, as per Fla. Stat. § 1012.31(2)
81 (f).

82 b. To assist in providing a response that meets the requester's expectations, the
83 requester should be asked to clearly identify the documents sought to be
84 examined or copied.

85 6. Public records requests are applicable to non-exempt, non-confidential portions of
86 existing public records. The District shall not be obligated to create a new record
87 or compile lists or information from various existing records to accommodate a
88 public records request, except as set forth in paragraph 36 below.

89 7. Categories of Requests

90 a. Routine records requests are those that are directed directly to a particular
91 department/school, the responsive records are readily available for inspection,
92 and the documents contain no or minimal confidential or exempt information
93 under the public records laws that would require redactions.

94 b. Complex or non-routine records requests are all other requests and
95 responsive records may exist in several departments/schools. District
96 employees receiving these requests must route the request through the Public
97 Information Coordinator (PIC) within Public Affairs.

98 **Responding to Records Requests:**

99 8. **Generally:**

100 a. The District's PIC within Public Affairs will acknowledge every request
101 submitted to Public Affairs, whether routine" or complex", by contacting the
102 requester (if known) via mail, email, telephone, and/or fax. After the request is
103 acknowledged, the PIC will route the request to the records custodian(s) of the
104 appropriate department(s) and/or school(s). Once a request is received by a
105 department or school records custodian from the PIC, he/she must notify the
106 PIC that the request has been received. If assistance is needed, such as to
107 seek clarification of the request, the records custodian should contact the PIC.

108 b. The school(s)/department(s) that have custody of the requested records must
109 make a good faith effort to determine -- **generally within three hours of**
110 **actually receiving notice of a public records request** – whether the

111 requested records are readily available (e.g., not in off-site storage) and, if so,
112 whether the requested records include, or are likely to include, exempt or
113 confidential information. After the school(s)/department(s) have conducted a
114 diligent search for all records responsive to the request, the custodian shall
115 immediately notify the PIC that said records are available for inspection and
116 copying and the location for inspection: where the records are kept, at Public
117 Affairs, or at such other location as the School District and the requester may
118 agree.

119 c. If the school(s)/department(s) that have custody of the requested records
120 determine that the records are not readily available, or that they contain or are
121 likely to contain confidential or exempt information, the custodian of records
122 shall promptly retrieve the records and/or determine whether they contain
123 exempt or confidential information. In addition, if the custodian determines
124 that the requested public records are not readily available, he/she shall inform
125 the PIC in Public Affairs of an estimated date that the records would be
126 available for inspection and the PIC shall promptly notify the requester of such
127 determination along with an estimate of the time needed to retrieve the
128 records.

129 d. As stated in item 8 (b) above, a public records request should be processed or
130 routed immediately to the appropriate person(s) to locate and provide the
131 information. Even if the request originated with the PIC within Public Affairs, it
132 is importation that the custodian follows all of the aforementioned steps to
133 ensure that the public records request is processed accurately, thoroughly and
134 in a timely manner. Once some of the requested records are available for
135 inspection, the department(s)/school(s) records custodian must notify the PIC
136 to contact the requester that the records (**even if in piecemeal**) are available
137 for inspection and copying and the location.

138 9. Any department/school receiving a public records request directly from a requester
139 shall respond by immediately acknowledging that the request has been received.
140 A prompt acknowledgement is required by law.

141 10. Florida law requires that responsive non-exempt public records be available for
142 public inspection at reasonable times and under reasonable circumstances; thus,
143 only a reasonable custodial delay necessary to retrieve a public record and review
144 and redact exempt information is allowed.

145 Routine Requests

146 11. As soon as a request is received from the requester via telephone, fax, e-mail,
147 mail, in person, or by any other means, the request shall be processed or routed
148 immediately to the school's/department's records custodian. Any custodian or
149 designee who requires assistance in routing a public records request should

150 immediately contact the PIC or, in that person's absence, Public Affairs' Executive
151 Secretary, so that processing of the request is not delayed.

152 12. If a public records request is received from the requester by a school/department
153 where the requested materials are located, the records custodian or designee
154 should immediately process the request in-house. If any issues arise, the
155 custodian or designee should communicate with the requester directly to seek
156 clarification of the request, or consult the PIC within Public Affairs, for assistance.

157 13. Accordingly, upon receipt of a public records request School Board members,
158 District employees, and District agents, persons or entities acting on behalf of the
159 School Board who that are subject to public records disclosure, and District
160 advisory committees receiving requests for public records shall, as quickly as
161 possible, make a diligent search and begin to collect and prepare to make available
162 for inspection the requested public record documents to the requester for routine
163 requests or, if necessary to complete the response pursuant to sub-Paragraphs
164 (19) and (20) below, by simultaneously forwarding the requests to Public Affairs.
165 Upon receipt of a request, Public Affairs coordinate responses through the Office
166 of, and the Office of shall determine which District personnel and departments, if
167 any, are to provide assistance in responding to the request.

168 a. ~~For purposes of Section (5), the term "District agent" means any public or~~
169 ~~private agency, company, organization, or person acting on behalf of the~~
170 ~~District and subject to the requirements of Fla. Stat. § 119.07(1).~~

171 b. ~~School principals/designees receiving public records requests should inform~~
172 ~~the Office of Public Affairs of all records requests except routine inquiries from~~
173 ~~media reporters.~~

174 14. If a department or school records custodian or designee receives a request that he
175 or she is uncertain about – such as identifying what records are being sought,
176 where records are located, or whether certain information may be exempt and
177 subject to redactions, contact the PIC. Once the school or department records
178 custodian has contacted the PIC and receives clarification for routing, the records
179 custodian should, if he/she has not already done so, acknowledge the request
180 immediately. If the requester seeks records located at that custodian's school or
181 department, the school or department records custodian will be required to either
182 perform or oversee a diligent search for the records and then review the records for
183 possible redactions to complete the request in a timely manner.

184 15. Records custodians should notify the requester within three (3) hours of receipt of
185 the request and provide the requester with a good faith estimate of the reasonable
186 time needed to comply with the request. If materials are readily available without
187 exemptions, the response should be ready on the day they are requested or the
188 next business day if the request is received late in the day. Do not delay release of

189 material which is available while waiting to complete redaction of exempt or
190 confidential material. Records can be sent piecemeal.

191 16. For routine requests handled directly by a department/school, the
192 department/school is required to maintain documentation, such as a log of the
193 request, the date of the response and the response, including documents provided,
194 for use in the event an issue concerning the response arises later. Each records
195 custodian **MUST** maintain a log of all public records requests received by his or her
196 school or department. The Master Log must include the following information: date
197 each public records request was made; the requester's contact information, if
198 known; description of the requested records; the departments/schools within the
199 School District which have or may have responsive records; contact person
200 responsible for fulfilling the request; any statutory exemption(s) which the custodian
201 asserts is applicable to part or all of the public records request; a description of all
202 public records produced to the requester for inspection and copied; and the
203 dates(s) when the information such as public records were produced to the
204 requester. The records custodian should contact the PIC with any questions
205 regarding the Public Records Request Log.

206 17. If any of the responsive materials would be redacted or not provided based upon
207 some exemption or confidentiality, the records custodian **MUST** provide to the
208 requester a citation of the particular statutory exemption which is the basis of the
209 withheld material. A list containing [common exemptions](#) can be found on the
210 District's web site.

211 **Non-routine requests**

212 18. If a Board Member, District Agent, school or department records custodian
213 receives a "complex" public records request (a request that requires the attention of
214 more than one department/school or will require extensive use of staff time to
215 comply - more than one hour), the receiving school or department records
216 custodian must acknowledge the request immediately and then forward the request
217 to the PIC for processing. In response to these complex requests, records
218 custodians should inform the requester that he/she is in receipt of the public
219 records request, that the request was forwarded to the Public Information
220 Coordinator to send to the appropriate departments for processing, that someone
221 will contact the requester when the record(s) is/are available or with another
222 response and that they should contact the Public Information Coordinator within
223 Public Affairs for any questions.

224 19. All departments and schools [employees or public records custodians] that receive
225 public records requests verbally or otherwise, except for routine requests for
226 documents that are readily available, shall fax or e-mail a copy of the request
227 immediately or on the day of receipt to Public Affairs. (If the request was remains
228 verbal, the department receiving the verbal request shall at that time memorialize it

229 in writing and fax or e-mail a copy to the Office of Public Affairs – while continuing
230 to compile for inspection the requested records for the requester.)

231 20. Non-routine responses, or those requests requiring responses from more than one
232 department, shall be coordinated through Public Affairs and that department will
233 make a reasonable effort to determine from other officers or employees within the
234 District whether such records exist and, if so, the location at which the records can
235 be assessed.

236 21. The Office of Public Affairs shall maintain for public records requests it coordinates
237 a master file containing either a description or actual copies of all public records
238 material released. For public records requests that Public Affairs coordinates, it
239 shall maintain a master file containing either a description or actual copies of all
240 public records material released, as well as the Master Log as described within
241 Paragraph 16 above.

242 22. When an employee receives a request from Public Affairs or any records custodian
243 to provide documents responsive to a request, it is expected that he or she would
244 conduct a diligent search and retrieve and provide as quickly as possible all
245 responsive public records to Public Affairs or records custodian, even if the
246 employee believes that copies may be housed in another department. If the
247 responsive documents cannot be provided immediately, the employee or the
248 department receiving the request should quickly, within three hours of the original
249 receipt of the request, notify Public Affairs as to an estimate of the earliest possible
250 time and/or day when the documents will be ready for review by the requester. If
251 some of the responsive records are available they should be provided **piecemeal**
252 while waiting for the rest to the responsive records to be produced.

253 23. If the material requested: a) cannot be produced without extensive use of clerical or
254 supervisory time in excess of one hour, b) would require extensive use of
255 information technology resources, c) is not readily available, or d) is not in the
256 format requested, a special service charge may be appropriate. Any special
257 service charge in excess of \$100.00 must be approved in advance by either the
258 Chief Academic Officer or the Chief Operating Officer. This information needs to
259 be provided to the requester or the PIC before the work compiling the records has
260 commenced.

261 24. The department/school (for routine requests) and Public Affairs (for complex
262 requests), must send a prompt acknowledgement to the requester. If the records
263 request was originally made to a department or school but Public Affairs will be
264 responding, the acknowledgement shall disclose the identity of the Public
265 Information Coordinator to the person requesting to inspect or copy public
266 records. If the responsive documents are voluminous in nature, rather than
267 forwarding documents to Public Affairs, the requester may be asked to inspect
268 responsive documents in the department of record and select specific documents

- 269 for copying.
- 270 25. If fees or special service charges will be incurred as allowed under paragraphs (28)
271 through (33) below, the department/school must promptly notify Public Affairs.
272 Also, the department/school must notify Public Affairs if a 10-day letter is being or
273 has been sent to an employee relating to the request for a personnel file document
274 which contains derogatory information.¹
- 275 26. If the document(s) requested are subject to any exemptions/redactions, the
276 department/school should **attempt to identify the exemption(s), and must make**
277 **any necessary redactions, before release of the document,** and cite to the
278 requester the applicable exemption(s). Some [common exemptions](#) applicable to
279 certain documents are listed on the Record's Management Department's web site.
280 See paragraph (40) below. Assistance can be provided by the Department of
281 Public Affairs or the Office of Chief Counsel. The release of non-exempt materials
282 should not be delayed while making redactions or exemptions and may be
283 provided in piece meal.
- 284 27. **Access:**
- 285 a. Unless exempt from public disclosure by law, District records, once located,
286 retrieved, and redacted (if necessary), shall be made available for inspection
287 or copying either at the Fulton-Holland Educational Services Center, located at
288 3300 Forest Hill Blvd., West Palm Beach, FL 33406, where the requester and
289 the District agree, or at any other District office where such records are
290 maintained, during the hours of 8:30 a.m. to 4:00 p.m., Monday through Friday
291 on weekdays when the District offices (or school, if applicable) are open.
- 292 b. However, when a deposit of estimated fees and charges is required pursuant
293 to paragraph ~~Section (14)~~ (33) below, the District will not proceed with the
294 request until the estimated funds are District receives the amount requested
295 for the deposited.
- 296 c. When access to records is granted, examination of the records will be made in
297 the presence of the Records Custodian regularly responsible for maintenance
298 of those records, the Public Affairs PIC, or a designee.
- 299 d. Whenever possible the public should be directed to the District's free website
300 and informed of the availability of public records that may be accessed without
301 charge.
- 302 e. The requester has the right to come and examine the documents to avoid a
303 charge for duplication. The requester must be advised of that option.

¹ Note, per Florida Statute, no derogatory information may be placed within an employee's personnel file without providing the employee a ten-day notice.

304 However, if there are extraordinary costs associated with obtaining the
 305 material then a special service charge may be appropriate. If so, the
 306 requester must be notified in advance before any work is undertaken to
 307 produce the requested material. Once it is determined that the requester
 308 wants the documents produced and/or copied, it will be necessary for the
 309 records custodian to **create an invoice/receipt** for the charges and present it
 310 to the requester. The school/department will keep a copy of the receipt,
 311 marked paid when it receives the payment from the requester. Payment can
 312 be in cash, but a check or money order is preferable. All monies received
 313 should be handled in the same manner as any other receipts received by the
 314 school/department. The paid receipt must be placed in storage for auditing
 315 purposes.

316 **28. Schedule of Fees**

317 a. The District shall furnish a copy or certified copy of any non-confidential, non-
 318 exempt record upon payment of the fee prescribed in Fla. Stat. § 119.07~~(1)~~ (a)
 319 or ~~(b)~~ or 119.08~~(3)~~ (4) (a) (b) and (c); 119.07 (3) (d), 119.07 (4) (e), or 119.01
 320 (2) (f). (if applicable), or as noted in the Schedule of Fees in Section ~~(9)~~
 321 paragraph (29) below.

322 b. Fees charged for the duplication of public records or special services charges
 323 as set forth within this policy shall be collected, deposited, and accounted for
 324 in accordance with administrative procedures established by the
 325 Superintendent.

326 29. The following Schedule of Fees for duplication only, is established consistent with
 327 Fla. Stat. § 119.07~~(1)~~ (4), shall be distributed, through this Policy, to each central
 328 office, and shall be updated as needed, so that fees can be communicated by all
 329 personnel to persons requesting public records. Wherever the term "actual cost"
 330 appears in this Schedule, it shall mean, as defined in Fla. Stat. § 119.011 (1) "the
 331 cost of the material and supplies used to duplicate the record, but it does not
 332 include the labor cost or overhead cost associated with such duplication," ~~as~~
 333 defined in Fla. Stat. § 119.07 (1) (a).

<u>TYPE OF RECORD DUPLICATED</u>	<u>FEES</u>
a. Legal page, one side	\$0.15
b. Letter page, one side	\$0.15
c. Legal page, double-sided	\$0.20
d. Letter page, double-sided	\$0.20
e. Audio tape	Actual cost (approx. \$3.00 per tape)
f. Video tape	Actual cost (approx. \$5.00 per video)
g. Computer diskette	Actual cost (approx. \$0.45 per diskette)
h. Computer tape (cartridge)	Actual cost (approx. \$5.35 per tape)
i. Computer tape (round)	Actual cost (approx. \$10.00 per tape)
j. Aerial photos or large maps (if available)	Actual cost plus reasonable labor and overhead

k. CD Actual cost (approx. \$1.00)

334 Note: Categories ~~(29) (8)~~ (a)-(d) above may include non-exempt personnel records of current and
335 former employees or non-employees, as well as non-exempt payroll records.

<u>ADDITIONAL SERVICES</u>	<u>FEES</u>
l. Certified copy charge	\$1.00
m. Special service charge (for extensive use of technology resources and/or clerical/supervisory assistance)	Actual cost (varies, but approx. average may be \$25.00 per hour; see Section Paragraph (40) <u>Paragraph (32)</u> below)

336

337 30. Regarding Public Records fees, Public Affairs has determined that if the
338 information requested is less than seven pages or under \$1.00, the department
339 and school records custodians should waive the fee.

340 31. For any copies not listed above, the charge shall be limited to the actual cost of
341 duplication, as defined in Fla. Stat. § 119.07(1) ~~(a)~~ 011(1). For a single request
342 where the copying charges would be \$1.00 or less the District may determine not
343 to charge. ~~Thus, normally,~~ the District does not charge for travel time or retrieval
344 costs for public records stored off-premises; however, a special service charge
345 may be added for extensive use of clerical or supervisory assistance or extensive
346 use of information technology resources, as provided in ~~Section Paragraph (32)~~,
347 below.

348 32. **Special Service Charge.** -- If the nature or volume of public records requested to
349 be inspected, examined, or copied is such as to require extensive use of
350 information technology resources, or extensive clerical or supervisory assistance
351 by personnel of the District, or both, the District may charge a reasonable special
352 service charge, which shall be *in addition to* the duplication charge, pursuant to Fla.
353 Stat. § 119.07(1) ~~(b)~~ (4) (d). All special service charges in excess of \$100.00 must
354 first be approved by the District's Chief Operating Officer or Chief Academic
355 Officer.

356 a. The term "extensive use" means any time longer than one hour needed to
357 complete all tasks defined in subparagraphs (i) and (ii) below:

358 i. The term "extensive use of *clerical or supervisory assistance*" includes
359 any time that exceeds longer than one hour used by staff in the location
360 and retrieval of ~~locating and retrieving of~~ records; reviewing records for
361 statutorily exempt information; preparing records for inspection or copying
362 by redacting or excising exempt or confidential information from records
363 prior to review or copying; monitoring of the inspection or copying of
364 records when necessary to ensure the integrity of the records; and
365 instructing, or supervising personnel in performing the foregoing tasks
366 when responding to a particular public records request.

367 ii. The term "extensive use of *information technology resources*" includes
368 time that exceeds longer than one hour used by staff in of writing or
369 executing software commands or setting up information technology
370 resources. Under Fla. Stat. § 119.07(1) (b), ~~the term shall include~~
371 .011(9), "information technology resources" means "data processing
372 hardware, and software, or and services; and/or communications,
373 supplies, personnel, facility resources, maintenance, and technology
374 training required to fulfill a given public records request." The term does
375 not include videotapes or VCRs.

376 b. The special service charge for "extensive use" may be based on either *or both*
377 of the following, as applicable:

378 i. the cost incurred for extensive use of information technology resources;
379 and/or

380 ii. the labor cost actually incurred by, or attributable to, the District for
381 clerical or supervisory assistance of the personnel providing the service.

382 A. When a special service charge is based, in whole or in part, on labor
383 costs, the time may be computed to the nearest one-sixth (1/6th) of
384 an hour, and the charge will be based on the current hourly rate of
385 pay (including excluding benefits) of the personnel whose time
386 contributes to the "extensive use" of clerical or supervisory
387 assistance required to fulfill the records request.

388 B. ~~As stated in the Attorney General's *Government in the Sunshine*~~
389 ~~*Law Manual 2002*, Part II, § L.7.c(2), When "extensive use" consists~~
390 ~~of clerical tasks such as locating documents in a filing cabinet or~~
391 ~~making photocopies, the District may will charge only a clerical rate~~
392 ~~even if, due to staff shortages, a more highly-paid person actually~~
393 ~~does the work.~~

394 C. However, when the "extensive use" consists of tasks that should be
395 performed by an attorney, law clerk, or paralegal, such as reviewing
396 materials for exemptions and confidential information requiring
397 redaction, the District may reasonably charge the attorney's or law
398 clerk's/paralegal's hourly salary (including excluding benefits), ~~as~~
399 ~~explained in the Attorney General's *Government in the Sunshine*~~
400 ~~*Law Manual 2002*, Part II, § L.7.c (2),.~~

401 33. **Deposit of Estimated Fees.** -- Prior to the duplication of any public record, the
402 District shall notify the ~~requester~~ requester of the estimated cost. Prior to the
403 assessment of any special service charge, the District shall notify the ~~requester~~
404 requester if the information does not appear to be readily identifiable, possibly does
405 not exist, or will require additional time to review and copy. Upon agreement by the

406 requester ~~requester~~ and payment of a deposit based upon estimated charges, if
407 any, the District will proceed to complete the request.

408 a. Of the monies deposited with the District for fulfillment of a public records
409 request, those in excess of the ~~actual~~ costs incurred to fulfill the request will be
410 refunded to the ~~requester~~ requester; or, in the alternative, the ~~requester~~
411 requester shall be required to remit additional monies to pay for any costs in
412 excess of the monies deposited with the District.

413 b. In the event the ~~requester~~ requester fails to remit additional monies to cover
414 costs in excess of the monies deposited, the District may withhold releasing
415 any public records produced pursuant to the request until those amounts are
416 paid in full.

417 c. Each designated records custodian should familiarize themselves with the
418 special services fees that can be found within this policy.

419 34. ~~Handling Subpoenas.~~ -- ~~The Department of Employee Records & Information~~
420 ~~Services shall respond to subpoenas involving personnel records. The Office of the~~
421 ~~Student Services shall respond to subpoenas involving student records. The Office~~
422 ~~of the Chief Counsel shall respond to subpoenas involving law suits where the~~
423 ~~Board is a party to the case. The Office of Public Affairs shall have access to each~~
424 ~~department's records involving their responses to such subpoenas.~~

425 35. ~~Other Litigation-Related~~ **Public Records Requests for Cases in Litigation.** --
426 ~~The Office of the Chief Counsel shall have the primary responsibility for~~ In
427 responding to public records requests involving lawsuits where the Board and/or its
428 agent(s) is a party to the case, the PIC, with the assistance and input of the Office
429 of Chief Counsel, will process all non-routine requests or those requiring responses
430 from more than one department. The Office of Public Affairs and the Office of Chief
431 Counsel and/or assigned outside counsel shall have access to and, upon request,
432 be provided copies of records involving the Chief counsel's response responsive to
433 these requests, as well as the response, for such records. The Office of Chief
434 Counsel shall handle routine requests, for documents maintained within its
435 department, and those not requiring multiple department coordination as stated
436 within paragraphs (11) through (17) above. The Office of Chief Counsel or
437 assigned outside counsel shall be responsible to respond to discovery requests
438 made during these lawsuits.

439 36. **Employee Records Requests.**—

440 a. ~~The Department of Employee Records & Information Services~~ The Customer
441 Relations Department within HR and other appropriate departments shall
442 respond to requests from the employees, and employee unions, and other
443 requesters for employee records in accordance with Fla. Stat. §§ 119.07(3)
444 and 231.294, 119.071 and 1012.31.

- 445 ~~b. The Office of Public Information—Public Affairs~~ shall have access to the
446 ~~Department of Employee Records & Information Services~~ those personnel file
447 records involving responses responsive to requests for such records. Pursuant
448 to Fla. Stat. § 1012.31(4), the District will provide or make available to the
449 requester a copy of all requested non-exempt materials related to the
450 employee’s employment whether contained in the official personnel file or not.
- 451 c. As required by law, upon receipt of a public records request for personnel
452 records of a current or former employee, the department housing those
453 records must ensure that the employee, pursuant to Fla. Stat. §1012.31(2)(c)
454 & (3)(a) 3, had received notice of any derogatory information at least ten days
455 prior to allowing public inspection. The required ten-day notice is required by
456 statute to be provided before the derogatory materials is placed in the
457 employee’s personnel file. The employee has the right to respond and have
458 attached his/her position relating to information contained in the file. The
459 notice should be provided by the most expeditious method and shall be
460 provided by either:
- 461 i. hand-delivery and the signing of the document to acknowledge receipt by
462 the employee; if the employee refuses to sign, such refusal should be
463 noted; or
- 464 ii. certified mail, return receipt requested.
- 465 d. If the 10-day letter is sent by certified mail and the return receipt has not been
466 received within two (2) weeks following the mailing, an attempt should be
467 made to contact the employee and the Post Office to determine the status and
468 when the documents were received.
- 469 i. If an attempt at such contact is unsuccessful (or if the certified-mail is
470 returned as “refused by addressee”), it is suggested that the notice and
471 information be forwarded to the employee’s supervisor immediately. The
472 supervisor should hand-deliver the notice and information to the
473 employee and obtain the employee’s signature on the photocopy. The
474 materials would be open to public inspection 10 days after the hand-
475 delivery.
- 476 ii. If the District cannot-verify mail delivery (or the certified mail is refused)
477 and the supervisor cannot make alternative hand-delivery, the materials
478 would be available for inspection 15 days after the mailing, if the District is
479 open that day.
- 480 e. It is recommended that the employee be notified of the request as a courtesy,
481 each time a request is made, with the name of the requester, if known; further,
482 the letter should state that the employee may submit a response that would be
483 provided to the requester when available. This action must not delay the

484 response to the request.

485 37. **Requests for Computer Data.** -- The District shall not be obligated to create a
486 new record or compile lists or information from various existing records to
487 accommodate a public records request, except as set forth within this paragraph.
488 As a general rule, the District is not required to reprogram its computers, compile
489 lists of data, or merge data to create computer files or records not already in
490 existence, in response to a public-records request. However, the Board
491 acknowledges that some programming may be done (and a special service charge
492 may apply pursuant to paragraph Section (10), (32), above) in the circumstances
493 recognized by the court in *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla. 4th DCA 1982):

- 494 a. when such programming is needed to electronically redact (delete) confidential
495 data from the computer file copy;
- 496 b. when the current form of a database does not fairly and meaningfully
497 represent the records;
- 498 e. when an existing program was designed to access only a portion of the data
499 fields contained in the existing electronic records; or
- 500 d. in other exceptional circumstances as determined by a court of competent
501 jurisdiction.

502 38. Pursuant to Fla. Attorney General Opinion 97-39, the District shall not be required
503 to furnish copies of its electronic public records in a format other than the standard
504 format ~~maintained~~ routinely maintained by the District in accordance with Fla. Stat. §
505 119.083(5) 01(2)(f). The District is not required to incur additional costs to convert
506 its existing electronic records which are maintained in a mainframe computer data
507 system in some standard format into another format, pursuant to Fla. Attorney
508 General Opinion 97-39. Electronic copies of non-exempt computer files will be
509 provided in the format in which they are maintained by the District, pursuant to Fla.
510 Attorney General Opinion 91-61.

511 39. **E-mail.**-- Many e-mail messages created or received in the transaction of official
512 District business are public records open to public inspection pursuant to Fla. Stat.
513 §§119.01 and 119.07. The content is the critical factor, rather than the medium.
514 Depending on the context and topic of a particular message and the District's
515 approved retention schedule, the E-mail may or may not be exempt from public
516 inspection under Florida's Public Records Law. Each user is individually
517 responsible for maintaining the public accessibility of his/her own incoming and
518 outgoing e-mail messages as required by the Public Records Law. Questions
519 relating to whether or not the content of a particular e-mail message constitutes a
520 public record or is covered by an exemption should be directed to ~~the~~ Public Affairs
521 Office or the Office of Chief Counsel.

522 40. **Redaction of Exempt and Confidential Information.**-- District personnel
523 responding to a public records request should follow these steps: a) determine if
524 the requested document is a public record under Fla. Stat. § 119.011(11); b) review
525 the document to see if any exemptions or confidentiality requirements apply under
526 state or federal law; and c) disclose the non-exempt/non-confidential material.

527 a. If a requested record or part of a record is confidential or exempt from
528 inspection and copying under state or federal law, the records custodian will
529 redact the exempt or confidential information and must state the basis and
530 statutory citation for the exemption.

531 ~~b. Unlike other records, pupil records are not permitted to be released in~~
532 ~~redacted form, due to privacy requirements for pupil records and reports~~
533 ~~under Fla. Stat. § 228.093 (3)(d); but it may be permissible to provide a~~
534 ~~summary of certain documents pursuant to DOE General Counsel's Opinion~~
535 ~~02-01.~~

536 e. The records custodian must ensure that all exempt information is redacted
537 before it is submitted to the requester and/or the PIC in Public Affairs and that
538 no redactions are made on the original document.

539 d. ~~A limited exception to the "no redaction" rule of sub-paragraph (b) may apply~~
540 ~~when a pupil student record or report contains information on more than~~
541 ~~one student. Under this exception, the other students' names must be~~
542 ~~redacted so that a parent/guardian can receive or review only the part~~
543 ~~pertaining to his/her child, in accordance with Fla. Stat. § 228.093(3)(a)2~~
544 ~~1022.22. Additionally, certain types of documents that may contain identifying~~
545 ~~information concerning students, such as personnel investigation reports~~
546 ~~(Johnson v. Deluz 875 So. 2d 1) (Fla. 4th DCA 2004) and certain lawsuit~~
547 ~~filings by students (Fla. Attorney General Opinion 2006-21) are not considered~~
548 ~~student educational records, although any personally-identifiable students~~
549 ~~information in those records must be redacted from the documents before they~~
550 ~~are provided for public inspection.~~

551 41. **Summary of Common Exemptions and Confidentiality Requirements.** -- A On
552 the School District's Management Records Department Web site at:
553 http://www.palmbeach.k12.fl.us/Records/Pub_publ.htm can be found a brief
554 summary of some common types of records that may be maintained by the District
555 and which are "exempt" or "confidential and exempt" from public records
556 disclosure. This list includes, but is not limited to, some of the following records
557 and others exemptions as provided by state or federal law. (For a more
558 comprehensive listing, refer to Part II of the annual Attorney General's
559 Government-in-the-Sunshine-Law Manual, available online at
560 <http://legal.firn.edu/sunshine/index.html>) or the First Amendment Foundation
561 website at:

- 562 http://www.floridafaf.org/index.php?option=com_wrapper&view=wrapper&Itemid=1
563 [29](#) (n [Note: t The following list is **not** intended to be comprehensive):]
- 564 a. ~~Educational records: personally identifiable pupil records or reports and any~~
565 ~~personal information contained therein, pursuant to Fla. Stat. § 228.093, and~~
566 ~~pupil cumulative records under § 232.23(1) (unless an exception applies under~~
567 ~~§ 228.093(3)(d));~~
- 568 b. ~~Generally, any letters discussing pupils, received by Board members, the~~
569 ~~Superintendent, or other District personnel, which constitute pupil records~~
570 ~~under Fla. Stat. § 228.093, as determined in DOE General Counsel's Opinion~~
571 ~~02-01;~~
- 572 c. ~~Records created as a result of exceptional student hearings, in accordance~~
573 ~~with § Fla. Stat. 230.23(4)(m);~~
- 574 d. ~~Juvenile justice records received by the dropout prevention program pursuant~~
575 ~~to Fla. Stat. § 230.2316(8);~~
- 576 e. ~~Various law enforcement records specified in Fla. Stat. § 119.07(3)(b)–(k);~~
- 577 f. ~~Social security numbers of all current and former employees, contained in~~
578 ~~employment records under Fla. Stat. §§ 119.07(3)(x) and 231.291(4);~~
- 579 g. ~~Various portions of personnel records as specified in Fla. Stat. §§ 119.07(3)~~
580 ~~and 231.291, and as defined in § 231.291(4) and interpreted in DOE General~~
581 ~~Counsel's Opinion 02-01, Advisory Opinions of the Florida Attorney General,~~
582 ~~and Florida court decisions;~~
- 583 h. ~~Bank account numbers or debit, charge, or credit card numbers given to the~~
584 ~~District for the purpose of payment of any fee or debt, pursuant to Fla. Stat. §~~
585 ~~119.07(3)(z);~~
- 586 i. ~~Personnel complaints or complaints of discrimination, during the investigation,~~
587 ~~if a investigation is begun, in accordance with Fla. Stat. § 231.291, 231.262(4),~~
588 ~~or 119.07(3)(u);~~
- 589 j. ~~Lists of retiree names and addresses, pursuant to Fla. Stat. § 121.031(5);~~
- 590 k. ~~School Police officers: The home addresses, telephone numbers, and places~~
591 ~~of employment of the spouses and children of School Police officers and the~~
592 ~~names and locations of the schools and day care facilities attended by their~~
593 ~~children, pursuant to Fla. Stat. § 119.07(3)(i);~~
- 594 l. ~~Certain employees: The home addresses, telephone numbers, and places of~~
595 ~~employment of the spouses and children (and the names and locations of the~~

- 596 ~~schools and day care facilities attended by their children) of certain~~
597 ~~employees, such as any who are former prosecutors; or current and former~~
598 ~~human resources, labor relations, or employee relations directors, assistant~~
599 ~~directors, managers, or assistant managers, whose duties include(d) hiring~~
600 ~~and firing employees, labor contract negotiation, administration, or other~~
601 ~~personnel-related duties, as specified in Fla. Stat. § 119.07(3)(i);~~
- 602 ~~m. Answer sheets and examination questions of exams administered by the~~
603 ~~District for employment purposes, in accordance with Fla. Stat. § 119.07(3)(a);~~
- 604 ~~n. Medical information pertaining to a prospective, current, or former Board~~
605 ~~members or District employee which, if disclosed, would identify that person,~~
606 ~~in accordance with Fla. Stat. § 119.07(3)(v); and information relating to the~~
607 ~~medical condition or status of any person covered by District insurance~~
608 ~~benefits, under Fla. Stat. § 760.50(5);~~
- 609 ~~e. The identify of a whistle-blower (and, if there is an investigation, other~~
610 ~~information received during the investigation) under Fla. Stat. § 112.3188;~~
- 611 ~~p. Ridesharing information provided to the District for the purpose of forming a~~
612 ~~ridesharing arrangement, pursuant to Fla. Stat. § 119.07(3)(j);~~
- 613 ~~q. Appraisals, offers, and counter offers relating to the purchase of real property~~
614 ~~pursuant to Fla. Stat. § 235.054;~~
- 615 ~~r. Sealed responses to request for bids or proposals, until such time as they are~~
616 ~~publicly opened pursuant to Fla. Stat. § 119.07(3)(m);~~
- 617 ~~s. The District Auditor's workpapers, notes, and preliminary or draft reports, until~~
618 ~~the audit is completed by providing the final report to the School Board, as set~~
619 ~~forth in Fla. Stat. § 119.07(3)(z) and Ch. 95-399 § 2, Laws of Fla.;~~
- 620 ~~t. Legal work product prepared by an attorney exclusively for civil or criminal~~
621 ~~litigation pursuant to Fla. Stat. § 119.07(3)(l);~~
- 622 ~~u. Data processing software obtained under a licensing agreement which~~
623 ~~prevents its disclosure, and data processing software designated by the Board~~
624 ~~as "sensitive" pursuant to Fla. Stat. § 119.083;~~
- 625 ~~v. The identity of donors and prospective donors to direct support organizations,~~
626 ~~in accordance with Fla. Stat. § 237.40(4);~~
- 627 ~~w. Work product developed in preparation for collective bargaining pursuant to~~
628 ~~Fla. Stat. § 447.605; and~~
- 629 ~~x. Various other exemptions and confidentiality requirements set forth in Fla.~~

630 Stat. § 119.07 and other state and federal statutory provisions, as explained in
631 Part II of the annual Attorney General's *Government in the Sunshine Law*
632 *Manual*.

633 **Handling Subpoenas for Documents.--**

634 42. The Customer Relations Department of Employee Records & Information Services
635 within Human Relations (HR) and other appropriate departments shall respond to
636 subpoenas involving requiring the production of personnel records. The Office of
637 the Student Department of Supplemental Educational Services shall respond to
638 subpoenas involving requiring the production of student records. The Office of the
639 Chief Counsel, or assigned outside counsel, shall respond to subpoenas involving
640 lawsuits where the Board or its agent in that his/her official capacity is a party to the
641 case. The Office of Public Affairs shall have access to each department's
642 records involving their responses to such subpoenas. All other subpoenas for
643 documents shall be processed through Public Affairs. If, however, a subpoena is
644 directed to a particular individual or department for testimony as well as the
645 production of documents, that person or department should coordinate the
646 production with HR, Public Affairs, or the Office of Chief Counsel, as stated above.

647 Generally:

648 43. District personnel may consult with Public Affairs and the Office of Chief Counsel
649 with questions about compliance with the provisions of this Policy.

650 44. The District will provide training to Records Custodians relating to the provisions of
651 this policy.

652 45. This Policy shall be interpreted consistently with Florida and federal law.

653 46. The Superintendent may issue bulletins consistent with this policy concerning
654 responding to public records requests or subpoenas.

655 STATUTORY AUTHORITY: Fla. Stat. §§ 230.22(2); 230.23(22); 230.23005(6)
656 1001.41(1) & (2); 1001.42 (253); 1001.43(6)

657 LAWS IMPLEMENTED: Fla. Stat. §§ 412.3188; 119.01; 119.011; 119.07; 119.071 2;
658 119.08; 119.083; 119.084; 119.085; 119.011(1); 121.031(5); 228.093; 230.23(1),
659 (4)(m)5, (11); 230.2316(8); 231.262(4); 231.291; 232.23; 235.054; 237.40(4); 447.605;
660 760.50(5), Ch. 95-399 § 2, Laws of Fla. 1002.22, 1002.221, 1001.42 (11), 1012.31; 20
661 U.S.C. 1232; 37 CFR Part 99

662 HISTORY: 5/19/99; 10/14/2002; / /10

Legal Signoff:

The Legal Department has reviewed proposed Policy 2.041 and finds it legally sufficient for adoption by the Board.

Attorney

Date