



POLICY 2.041

5-C I recommend that the Board approve development of the proposed **revised** Policy 2.041, entitled "Public Records."

[Contact: Nat Harrington, PX 48227.]

Development

CONSENT ITEM

- 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.
- 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 <http://www.palmbeach.k12.fl.us/Records/Text/RetnSchd.doc>), 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

36 irrespective of the retention schedule until the records hold is released. The
37 Office of Chief Counsel will notify by written communication the relevant
38 departments of records holds relating to pending or potential litigation of which
39 the office is aware.

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

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

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

56 4. **Records Custodians:**

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

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

69 **Public Records Requests:**

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

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

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

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

90 7. Categories of Requests

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

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

99 Responding to Records Requests:

100 8. Generally:

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

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

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

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

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

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

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

146 Routine Requests

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

150 designee who requires assistance in routing a public records request should
151 immediately contact the PIC or, in that person's absence, Public Affairs' Executive
152 Secretary, so that processing of the request is not delayed.

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

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

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

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

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

185 15. Records custodians should notify the requester within three (3) hours of receipt of
186 the request and provide the requester with a good faith estimate of the reasonable
187 time needed to comply with the request. If materials are readily available without
188 exemptions, the response should be ready on the day they are requested or the

189 next business day if the request is received late in the day. Do not delay release of
190 material which is available while waiting to complete redaction of exempt or
191 confidential material. Records can be sent piecemeal.

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

207 17. If any of the responsive materials would be redacted or not provided based upon
208 some exemption or confidentiality, the records custodian **MUST** provide to the
209 requester a citation of the particular statutory exemption which is the basis of the
210 withheld material. A list containing common exemption can be found on the
211 District's web site at: http://www.palmbeach.k12.fl.us/records/Pub_public.htm.

212 **Non-routine requests**

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

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

229 verbal, the department receiving the verbal request shall at that time memorialize it
230 in writing and fax or e-mail a copy to ~~the Office of Public Affairs~~ – while continuing
231 to compile for inspection the requested records for the requester.)

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

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

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

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

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

269 responsive documents in the department of record and select specific documents
270 for copying.

271 25. If fees or special service charges will be incurred as allowed under paragraphs (28)
272 through (33) below, the department/school must promptly notify Public Affairs.
273 Also, the department/school must notify Public Affairs if a 10-day letter is being or
274 has been sent to an employee relating to the request for a personnel file document
275 which contains derogatory information.¹

276 26. If the document(s) requested are subject to any exemptions/redactions, the
277 department/school should **attempt to identify the exemption(s), and must make**
278 **any necessary redactions, before release of the document,** and cite to the
279 requester the applicable exemption(s). Some common exemptions applicable to
280 certain documents are listed on the Record's Management Department's web site
281 at: http://www.palmbeach.k12.fl.us/records/pub_publ.htm. See paragraph (40)
282 below. Assistance can be provided by the Department of Public Affairs or the
283 Office of Chief Counsel. The release of non-exempt materials should not be
284 delayed while making redactions or exemptions and may be provided in piece
285 meal.

286 27. **Access:**

287 a. Unless exempt from public disclosure by law, District records, once located,
288 retrieved, and redacted (if necessary), shall be made available for inspection
289 or copying either at the Fulton-Holland Educational Services Center, located at
290 3300 Forest Hill Blvd., West Palm Beach, FL 33406, where the requester and
291 the District agree, or at any other District office where such records are
292 maintained, during the hours of 8:30 a.m. to 4:00 p.m., Monday through Friday
293 on weekdays when the District offices (or school, if applicable) are open.

294 b. However, when a deposit of estimated fees and charges is required pursuant
295 to paragraph ~~Section (14)~~ (33) below, the District will not proceed with the
296 request until the ~~estimated funds are~~ District receives the amount requested
297 for the deposited.

298 c. When access to records is granted, examination of the records will be made in
299 the presence of the Records Custodian regularly responsible for maintenance
300 of those records, the Public Affairs PIC, or a designee.

301 d. Whenever possible the public should be directed to the District's free website
302 and informed of the availability of public records that may be accessed without
303 charge.

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

318 28. **Schedule of Fees**

- 319 a. The District shall furnish a copy or certified copy of any non-confidential, non-
320 exempt record upon payment of the fee prescribed in Fla. Stat. § 119.07(1) (a)
321 or (b) or 119.08(3) (4) (a) (b) and (c); 119.07 (3) (d), 119.07 (4) (e), or 119.01
322 (2) (f). (if applicable), or as noted in the Schedule of Fees in Section (9)
323 paragraph (29) below.
- 324 b. Fees charged for the duplication of public records or special services charges
325 as set forth within this policy shall be collected, deposited, and accounted for
326 in accordance with administrative procedures established by the
327 Superintendent.

328 29. The following Schedule of Fees for duplication only, is established consistent with
329 Fla. Stat. § 119.07(4) (4), shall be distributed, through this Policy, to each central
330 office, and shall be updated as needed, so that fees can be communicated by all
331 personnel to persons requesting public records. Wherever the term "actual cost"
332 appears in this Schedule, it shall mean, as defined in Fla. Stat. § 119.011 (1) "the
333 cost of the material and supplies used to duplicate the record, but it does not
334 include the labor cost or overhead cost associated with such duplication," as
335 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)

336

337 Note: Categories ~~(29)~~ ~~(8)~~ (a)-(d) above may include non-exempt personnel records of current and
338 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>(32)</u> below)

339

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

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

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

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

361 i. The term "extensive use of *clerical or supervisory assistance*" includes
362 any time that exceeds longer than one hour used by staff in the location
363 and retrieval of locating and retrieving of records; reviewing records for
364 statutorily exempt information; preparing records for inspection or copying
365 by redacting or excising exempt or confidential information from records
366 prior to review or copying; monitoring of the inspection or copying of

367 records when necessary to ensure the integrity of the records; and
368 instructing, or supervising personnel in performing the foregoing tasks
369 when responding to a particular public records request.

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

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

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

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

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

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

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

404 33. **Deposit of Estimated Fees.** -- Prior to the duplication of any public record, the

405 District shall notify the ~~requester~~ requester of the estimated cost. Prior to the
406 assessment of any special service charge, the District shall notify the ~~requester~~
407 requester if the information does not appear to be readily identifiable, possibly does
408 not exist, or will require additional time to review and copy. Upon agreement by the
409 ~~requester~~ requester and payment of a deposit based upon estimated charges, if
410 any, the District will proceed to complete the request.

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

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

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

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

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

442 36. Employee Records Requests.—

443 a. ~~The Department of Employee Records & Information Services~~ The Customer

444 Relations Department within HR and other appropriate departments shall
445 respond to requests from the employees, and employee unions, and other
446 requesters for employee records in accordance with Fla. Stat. §§ 119.07(3)
447 and 231.291, 119.071 and 1012.31.

448 b. The Office of Public Information-Public Affairs shall have access to the
449 Department of Employee Records & Information Services those personnel file
450 records involving responses responsive to requests for such records. Pursuant
451 to Fla. Stat. § 1012.31(4), the District will provide or make available to the
452 requester a copy of all requested non-exempt materials related to the
453 employee's employment whether contained in the official personnel file or not.

454 c. As required by law, upon receipt of a public records request for personnel
455 records of a current or former employee, the department housing those
456 records must ensure that the employee, pursuant to Fla. Stat. §1012.31(2)(c)
457 & (3)(a) 3, had received notice of any derogatory information at least ten days
458 prior to allowing public inspection. The required ten-day notice is required by
459 statute to be provided before the derogatory materials is placed in the
460 employee's personnel file. The employee has the right to respond and have
461 attached his/her position relating to information contained in the file. The
462 notice should be provided by the most expeditious method and shall be
463 provided by either:

464 i. hand-delivery and the signing of the document to acknowledge receipt by
465 the employee; if the employee refuses to sign, such refusal should be
466 noted; or

467 ii. certified mail, return receipt requested.

468 d. If the 10-day letter is sent by certified mail and the return receipt has not been
469 received within two (2) weeks following the mailing, an attempt should be
470 made to contact the employee and the Post Office to determine the status and
471 when the documents were received.

472 i. If an attempt at such contact is unsuccessful (or if the certified-mail is
473 returned as "refused by addressee"), it is suggested that the notice and
474 information be forwarded to the employee's supervisor immediately. The
475 supervisor should hand-deliver the notice and information to the
476 employee and obtain the employee's signature on the photocopy. The
477 materials would be open to public inspection 10 days after the hand-
478 delivery.

479 ii. If the District cannot-verify mail delivery (or the certified mail is refused)
480 and the supervisor cannot make alternative hand-delivery, the materials
481 would be available for inspection 15 days after the mailing, if the District is
482 open that day.

483 e. It is recommended that the employee be notified of the request as a courtesy,
484 each time a request is made, with the name of the requester, if known; further,
485 the letter should state that the employee may submit a response that would be
486 provided to the requester when available. This action must not delay the
487 response to the request.

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

497 a. when such programming is needed to electronically redact (delete) confidential
498 data from the computer file copy;

499 b. when the current form of a database does not fairly and meaningfully
500 represent the records;

501 c. when an existing program was designed to access only a portion of the data
502 fields contained in the existing electronic records; or

503 d. in other exceptional circumstances as determined by a court of competent
504 jurisdiction.

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

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

522 relating to whether or not the content of a particular e-mail message constitutes a
523 public record or is covered by an exemption should be directed to the Public Affairs
524 Office or the Office of Chief Counsel.

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

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

534 b. ~~Unlike other records, pupil records are not permitted to be released in~~
535 ~~redacted form, due to privacy requirements for pupil records and reports~~
536 ~~under Fla. Stat. § 228.093 (3)(d); but it may be permissible to provide a~~
537 ~~summary of certain documents pursuant to DOE General Counsel's Opinion~~
538 ~~02-01.~~

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

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

554 41. **Summary of Common Exemptions and Confidentiality Requirements.** -- A On
555 the School District's Management Records Department Web site at:
556 http://www.palmbeach.k12.fl.us/Records/Pub_publ.htm can be found a brief
557 summary of some common types of records that may be maintained by the District
558 and which are "exempt" or "confidential and exempt" from public records
559 disclosure. This list includes, but is not limited to, some of the following records
560 and others exemptions as provided by state or federal law. (For a more

561 comprehensive listing, refer to Part II of the annual Attorney General's
562 *Government-in-the-Sunshine-Law Manual*, available online at
563 <http://legal.firn.edu/sunshine/index.html>) or the First Amendment Foundation
564 website at:
565 http://www.floridafaf.org/index.php?option=com_wrapper&view=wrapper&Itemid=1
566 29 (Note: † The following list is **not** intended to be comprehensive):]

567 a. ~~Educational records: personally identifiable pupil records or reports and any~~
568 ~~personal information contained therein, pursuant to Fla. Stat. § 228.093, and~~
569 ~~pupil cumulative records under § 232.23(1) (unless an exception applies under~~
570 ~~§ 228.093(3)(d));~~

571 b. ~~Generally, any letters discussing pupils, received by Board members, the~~
572 ~~Superintendent, or other District personnel, which constitute pupil records~~
573 ~~under Fla. Stat. § 228.093, as determined in DOE General Counsel's Opinion~~
574 ~~02-01;~~

575 c. ~~Records created as a result of exceptional student hearings, in accordance~~
576 ~~with § Fla. Stat. 230.23(4)(m)5;~~

577 d. ~~Juvenile justice records received by the dropout prevention program pursuant~~
578 ~~to Fla. Stat. § 230.2316(8);~~

579 e. ~~Various law enforcement records specified in Fla. Stat. § 119.07(3)(b)–(k);~~

580 f. ~~Social security numbers of all current and former employees, contained in~~
581 ~~employment records under Fla. Stat. §§ 119.07(3)(x) and 231.291(4);~~

582 g. ~~Various portions of personnel records as specified in Fla. Stat. §§ 119.07(3)~~
583 ~~and 231.291, and as defined in § 231.291(4) and interpreted in DOE General~~
584 ~~Counsel's Opinion 02-01, Advisory Opinions of the Florida Attorney General,~~
585 ~~and Florida court decisions;~~

586 h. ~~Bank account numbers or debit, charge, or credit card numbers given to the~~
587 ~~District for the purpose of payment of any fee or debt, pursuant to Fla. Stat. §~~
588 ~~119.07(3)(z);~~

589 i. ~~Personnel complaints or complaints of discrimination, during the investigation,~~
590 ~~if a investigation is begun, in accordance with Fla. Stat. § 231.291, 231.262(4),~~
591 ~~or 119.07(3)(u);~~

592 j. ~~Lists of retiree names and addresses, pursuant to Fla. Stat. § 121.031(5);~~

593 k. ~~School Police officers: The home addresses, telephone numbers, and places~~
594 ~~of employment of the spouses and children of School Police officers and the~~
595 ~~names and locations of the schools and day care facilities attended by their~~

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

630 w. ~~Work product developed in preparation for collective bargaining pursuant to~~
631 ~~Fla. Stat. § 447.605; and~~

632 x. ~~Various other exemptions and confidentiality requirements set forth in Fla.~~
633 ~~Stat. § 119.07 and other state and federal statutory provisions, as explained in~~
634 ~~Part II of the annual Attorney General's *Government-in-the-Sunshine-Law*~~
635 ~~*Manual.*~~

636 **Handling Subpoenas for Documents.--**

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

650 **Generally:**

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

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

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

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

658 STATUTORY AUTHORITY: Fla. Stat. §§ ~~230.22(2); 230.23(22); 230.23005(6)~~
659 ~~1001.41(1) & (2); 1001.42 (253); 1001.43(6)~~

660 LAWS IMPLEMENTED: Fla. Stat. §§ ~~442.3488; 119.01; 119.011; 119.07; 119.071 2;~~
661 ~~119.08; 119.083; 119.084; 119.085; 119.011(1); 121.031(5); 228.093; 230.23(1),~~
662 ~~(4)(m)5, (11); 230.2316(8); 231.262(4); 231.291; 232.23; 235.054; 237.40(4); 447.605;~~
663 ~~760.50(5), Ch. 95-399 § 2, Laws of Fla. 1002.22, 1002.221, 1001.42 (11), 1012.31; 20~~
664 ~~U.S.C. 1232; 37 CFR Part 99~~

665 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 development by the Board.

Attorney

Date