

**POLICY 2.041**

**4-D** I recommend the Board adopt the proposed revisions to Policy 2.041, entitled "Public Records."

[Contact: Nat Harrington, 434-8228.]

◆ **Adoption**

- On Sept. 9, the Board approved the proposed revisions for adoption on October 14.

CONSENT ITEM

**PROPOSED REVISED POLICY 2.041**

**PUBLIC RECORDS**

- 1 1. For purposes of this policy, the ~~The~~ term "public records," are all records as defined  
2 in Chapters Fla. Stat. § 119.011(1), 120 and 373, Fla. Stat., and includes "all  
3 documents, papers, letters, maps, books, tapes, photographs, films, sound  
4 recordings, data processing software, or other material, regardless of the physical  
5 form, characteristics, or means of transmission, made or received pursuant to law  
6 or ordinance or in connection with the transaction of official business" by the Board  
7 and District School System information in any media, including, but not limited to  
8 paper, magnetic (audio tapes, videotapes, and computer tapes), microfilm/fiche,  
9 optical disk and electronic mail.
- 10  
11 2. Public records shall be maintained in accordance with the District's Retention  
12 Schedule (currently available online at [http://www.palmbeach.k12.fl.us/Records/](http://www.palmbeach.k12.fl.us/Records/Records.htm)  
13 [Records.htm](http://www.palmbeach.k12.fl.us/Records/Records.htm)), approved under Fla. Stat. § 119.01(4).
- 14  
15 3. Persons may request public records either verbally or in writing. Requesters are  
16 encouraged to submit requests in writing to expedite accurate processing of their  
17 requests. Requests should be sufficiently detailed to identify the documents  
18 sought to be examined or copied.
- 19  
20 4. Public records requests are applicable to non-exempt, non-confidential portions of  
21 existing records. The District shall not be obligated to create a new record or  
22 compile lists or information from various existing records to accommodate a public  
23 records request.
- 24  
25 5. ~~All~~ School Board members, District employees and agents, and advisory  
26 committees receiving requests for public records shall be ~~coordinated~~ coordinate  
27 responses through the Office of Public Affairs, and the Office of Public Affairs shall  
28 determine which District personnel and departments are to provide assistance in  
29 responding to the request.
- 30  
31 a. All departments that receive public records requests shall fax them on the day  
32 of receipt to the Office of Public Affairs. (If the request was verbal, the  
33 department receiving the verbal request shall memorialize it in writing and fax  
34 a copy to the Office of Public Affairs.)
- 35

36 b. For purposes of Section (5), the term "District agent" means any public or  
37 private agency, company, organization, or person acting on behalf of the  
38 District and subject to the requirements of Fla. Stat. § 119.07(1).  
39

40 c. School principals/designees receiving public records requests should inform  
41 the Office of Public Affairs of all records requests except routine inquiries from  
42 media reporters.  
43

44 d. The Office of Public Affairs shall maintain a master file containing either a  
45 description or actual copies of all public records material released.  
46

47 6. Unless exempt from public disclosure by law, District records, once located,  
48 retrieved, and redacted (if necessary), shall be made available for inspection or  
49 copying either at the Fulton-Holland Educational Services Center, located at 3318  
50 3300 Forest Hill Blvd., West Palm Beach, FL 33404, or at any other District office  
51 where such records are maintained, during the hours of 8:30 a.m. to 4:00 p.m.,  
52 Monday through Friday. However, when a deposit of estimated fees and charges  
53 is required pursuant to Section (12), the District will not proceed with the request  
54 until the estimated funds are deposited.  
55

56 ~~6. Requesters are encouraged to submit requests in writing to expedite accurate~~  
57 ~~processing of their requests. Requests should be sufficiently detailed to identify the~~  
58 ~~documents sought to be examined or copied.~~  
59

60 ~~7. **Schedule of Fees.**-- A schedule of fees will be provided through Directive 2.041~~  
61 ~~and The District shall furnish a copy or certified copy of any non-confidential, non-~~  
62 ~~exempt record upon payment of the fee prescribed in Fla. Stat. § 119.07(1)(a) or~~  
63 ~~(b) or 119.08(3) (if applicable), or as noted in the Schedule of Fees in Section (9).~~  
64

65 8. The following Schedule of Fees, established consistent with Fla. Stat. § 119.07(1),  
66 shall be distributed, through this Policy, to each central office, and shall be updated  
67 as needed, so that fees can be communicated by all personnel to persons  
68 requesting public records. Wherever the term "actual cost" appears in this  
69 Schedule, it shall mean "the cost of the material and supplies used to duplicate the  
70 record, but it does not include the labor cost or overhead cost associated with such  
71 duplication," as defined in Fla. Stat. § 119.07(1)(a).  
72  
73

<u>74</u>	<u>TYPE OF RECORD DUPLICATED</u>	<u>FEES</u>
75		
76	<u>a. Legal page, one side</u>	<u>\$0.15</u>
77	<u>b. Letter page, one side</u>	<u>\$0.15</u>
78	<u>c. Legal page, double-sided</u>	<u>\$0.20</u>
79	<u>d. Letter page, double-sided</u>	<u>\$0.20</u>
80	<u>e. Audio tape</u>	<u>Actual cost (approx. \$3.00 per tape)</u>
81	<u>f. Video tape</u>	<u>Actual cost (approx. \$5.00 per video)</u>
82	<u>g. Computer diskette</u>	<u>Actual cost (approx. \$0.45 per diskette)</u>
83	<u>h. Computer tape (cartridge)</u>	<u>Actual cost (approx. \$5.35 per tape)</u>
84	<u>i. Computer tape (round)</u>	<u>Actual cost (approx. \$10.00 per tape)</u>
85	<u>j. Aerial photos or large maps</u>	<u>Actual cost plus reasonable labor and</u>
86	<u>(if available)</u>	<u>overhead</u>

87

88 Note: Categories (a)-(d) above may include non-exempt personnel records of current and

89 former employees or non-employees, as well as non-exempt payroll records.

<u>91</u>	<u>ADDITIONAL SERVICES</u>	<u>FEES</u>
92		
93	<u>k. Certified copy charge</u>	<u>\$1.00</u>
94	<u>l. Special service charge (for</u>	<u>Actual cost (varies, but approx. average</u>
95	<u>extensive use of technology resources</u>	<u>may be \$25.00 per hour; see Section (10)</u>
96	<u>and/or clerical/supervisory assistance)</u>	<u>below)</u>

97

98 9. For any copies not listed above, the charge shall be limited to the actual cost of

99 duplication, as defined in Fla. Stat. § 119.07(1)(a). Thus, normally, the District

100 does not charge for travel time or retrieval costs for public records stored off-

101 premises; however, a special service charge may be added for extensive use of

102 clerical or supervisory assistance or extensive use of information technology

103 resources, as provided in Section (10), below.

104

105 10. **Special Service Charge.**-- If the nature or volume of public records requested to

106 be inspected, examined, or copied is such as to require extensive use of

107 information technology resources, or extensive clerical or supervisory assistance

108 by personnel of the District, or both, the District may charge a reasonable special

109 service charge, which shall be *in addition to* the duplication charge, pursuant to Fla.

110 Stat. § 119.07(1)(b).

111

112 a. The term "extensive use" means any time longer than one hour needed to

113 complete all tasks defined in subparagraphs (i) and (ii) below:

114  
115 i. The term "extensive use of clerical or supervisory assistance" includes  
116 longer than one hour of locating and retrieving of records; reviewing  
117 records for statutorily exempt information; preparing records for  
118 inspection or copying by redacting or excising exempt or confidential  
119 information from records prior to review or copying; monitoring of the  
120 inspection or copying of records when necessary to ensure the integrity of  
121 the records; and instructing, or supervising personnel in performing the  
122 foregoing tasks when responding to a particular public records request.

123  
124 ii. The term "extensive use of information technology resources" includes  
125 longer than one hour of writing or executing software commands or  
126 setting up information technology resources. Under Fla. Stat. §  
127 119.07(1)(b), the term shall include data processing hardware, software,  
128 or services; and/or communications, supplies, personnel, facility  
129 resources, maintenance, and technology training required to fulfill a given  
130 public records request. The term does not include videotapes or VCRs.

131  
132 b. The special service charge for "extensive use" may be based on either or both  
133 of the following, as applicable:

134  
135 i. the cost incurred for extensive use of information technology resources;  
136 and/or

137  
138 ii. the labor cost actually incurred by, or attributable to, the District for  
139 clerical or supervisory assistance of the personnel providing the service.

140  
141 A. When a special service charge is based, in whole or in part, on labor  
142 costs, the time may be computed to the nearest one-sixth (1/6th) of  
143 an hour, and the charge will be based on the current hourly rate of  
144 pay (excluding benefits) of the personnel whose time contributes to  
145 the "extensive use" of clerical or supervisory assistance required to  
146 fulfil the records request.

147  
148 B. As stated in the Attorney General's Government-in-the-Sunshine-  
149 Law Manual 2002, Part II, § L.7.c(2), when "extensive use" consists  
150 of clerical tasks such as locating documents in a filing cabinet or  
151 making photocopies, the District will charge a clerical rate even if,

152 due to staff shortages, a more highly-paid person actually does the  
153 work.

154  
155 C. However, when the "extensive use" consists of tasks that should be  
156 performed by an attorney, law clerk, or paralegal, such as reviewing  
157 materials for exemptions and confidential information requiring  
158 redaction, the District may reasonably charge the attorney's or law  
159 clerk's/paralegal's hourly salary (excluding benefits), as explained in  
160 As stated in the Attorney General's *Government-in-the-Sunshine-*  
161 *Law Manual 2002*, Part II, § L.7.c(2),.

162  
163 **11. Deposit of Estimated Fees.**-- Prior to the duplication of any public record, the  
164 District shall notify the requester of the estimated cost. Prior to the assessment of  
165 any special service charge, the District shall notify the requester if the information  
166 does not appear to be readily identifiable, possibly does not exist, or will require  
167 additional time to review and copy. Upon agreement by the requester and  
168 payment of estimated charges, if any, the District will proceed to complete the  
169 request.

170  
171 a. Of the monies deposited with the District for fulfillment of a public records  
172 request, those in excess of the actual costs incurred to fulfill the request will be  
173 refunded to the requester; or, in the alternative, the requester shall be required  
174 to remit additional monies to pay for any costs in excess of the monies  
175 deposited with the District.

176  
177 b. In the event the requester fails to remit additional monies to cover costs in  
178 excess of the monies deposited, the District may withhold releasing any public  
179 records produced pursuant to the request until those amounts are paid in full.

180  
181 **12. Handling Subpoenas.**-- The Department of Employee Records & Information  
182 Services shall respond to subpoenas involving personnel records. The Office of  
183 the Student Services shall respond to subpoenas involving student records. The  
184 Office of the Chief Counsel shall respond to subpoenas involving law suits where  
185 the Board is a party to the case. The Office of Public Affairs shall have access to  
186 each department's records involving their responses to such subpoenas.

187  
188 **13. Other Litigation-Related Requests.**-- The Office of the Chief Counsel shall have  
189 the primary responsibility for responding to public records requests involving

190 lawsuits where the Board is a party to the case. The Office of Public Affairs shall  
191 have access to records involving the Chief Counsel's response to requests for such  
192 records.

194 **14. Employee Records Requests.--** The Department of Employee Records &  
195 Information Services shall respond to requests from the employees and employee  
196 unions for employee records in accordance with Fla. Stat. §§ 119.07(3) and  
197 231.291. The Office of Public Information shall have access to the Department of  
198 Employee Records & Information Services records involving responses to requests  
199 for such records.

201 **15. Requests for Computer Data.--** As a general rule, the District is not required to  
202 reprogram its computers, compile lists of data, or merge data to create computer  
203 files or records not already in existence, in response to a public-records request.  
204 However, the Board acknowledges that some programming may be done (and a  
205 special service charge may apply pursuant to Section (10), above) in the  
206 circumstances recognized by the court in *Seigle v. Barry*, 422 So. 2d 63, 65 (Fla.  
207 4th DCA 1982):

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

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

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

218 d. in other exceptional circumstances as determined by a court of competent  
219 jurisdiction.

221 **16. Pursuant to Fla. Attorney General Opinion 97-39, the District shall not be required**  
222 **to furnish copies of its electronic public records in a format other than the standard**  
223 **format routinely maintained by the District in accordance with Fla. Stat. §**  
224 **119.083(5). The District is not required to incur additional costs to convert its**  
225 **existing electronic records which are maintained in a mainframe computer data**  
226 **system in some standard format into another format, pursuant to Fla. Attorney**  
227 **General Opinion 97-39. Electronic copies of non-exempt computer files will be**

228 provided in the format in which they are maintained by the District, pursuant to Fla.  
229 Attorney General Opinion 91-61.

230

231 17. E-mail.-- Many e-mail messages created or received in the transaction of official  
232 District business are public records open to public inspection pursuant to Fla. Stat.  
233 § 119.01. The content is the critical factor, rather than the medium. Depending on  
234 the context and topic of a particular message and the District's approved retention  
235 schedule, the E-mail may or may not be exempt from public inspection under  
236 Florida's Public Records Law. Each user is individually responsible for maintaining  
237 the public accessibility of his/her own incoming and outgoing e-mail messages as  
238 required by the Public Records Law. Questions relating to whether or not the  
239 content of a particular e-mail message constitutes a public record or is covered by  
240 an exemption should be directed to the Public Affairs Office or the Office of Chief  
241 Counsel.

242

243 18. Redaction of Exempt and Confidential Information.-- District personnel  
244 responding to a public records request should follow these steps: a) determine if  
245 the requested document is a public record under Fla. Stat. § 119.011; b) review the  
246 document to see if any exemptions or confidentiality requirements apply under  
247 state or federal law; and c) disclose the non-exempt/non-confidential material.

248

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

253

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

258

259 c. A limited exception to the "no redaction" rule of paragraph (b) may apply when  
260 a pupil record or report contains information on more than one student. Under  
261 this exception, the other students' names must be redacted so that a  
262 parent/guardian can receive or review only the part pertaining to his/her child,  
263 in accordance with Fla. Stat. § 228.093(3)(a)2.

264

265 19. Summary of Common Exemptions and Confidentiality Requirements. A brief



266 summary of **some common** types of records that may be maintained by the  
267 District and which are "exempt" or "confidential and exempt" from public disclosure  
268 includes, but is **not limited to**, the following records and others as provided by  
269 state or federal law (for a more comprehensive listing, refer to Part II of the annual  
270 Attorney General's *Government-in-the-Sunshine-Law Manual*, available online at  
271 <http://legal.firn.edu/sunshine/index.html>) (note: the following list is **not** intended to  
272 be comprehensive):

273  
274 a. Educational records: personally identifiable pupil records or reports and any  
275 personal information contained therein, pursuant to Fla. Stat. § 228.093, and  
276 pupil cumulative records under § 232.23(1) (unless an exception applies under  
277 § 228.093(3)(d)):

278  
279 b. Generally, any letters discussing pupils, received by Board members, the  
280 Superintendent, or other District personnel, which constitute pupil records  
281 under Fla. Stat. § 228.093, as determined in DOE General Counsel's Opinion  
282 02-01:

283  
284 c. Records created as a result of exceptional student hearings, in accordance  
285 with § Fla. Stat. 230.23(4)(m)5:

286  
287 d. Juvenile justice records received by the dropout prevention program pursuant  
288 to Fla. Stat. § 230.2316(8):

289  
290 e. Various law enforcement records specified in Fla. Stat. § 119.07(3)(b) - (k):

291  
292 f. Social security numbers of all current and former employees, contained in  
293 employment records under Fla. Stat. §§ 119.07(3)(x) and 231.291(4):

294  
295 g. Various portions of personnel records as specified in Fla. Stat. §§ 119.07(3)  
296 and 231.291, and as defined in § 231.291(4) and interpreted in DOE General  
297 Counsel's Opinion 02-01, Advisory Opinions of the Florida Attorney General,  
298 and Florida court decisions:

299  
300 h. Bank account numbers or debit, charge, or credit card numbers given to the  
301 District for the purpose of payment of any fee or debt, pursuant to Fla. Stat. §  
302 119.07(3)(z):

303

- 304 i. Personnel complaints or complaints of discrimination, during the investigation,  
305 if a investigation is begun, in accordance with Fla. Stat. § 231.291, 231.262(4),  
306 or 119.07(3)(u);  
307
- 308 j. Lists of retiree names and addresses, pursuant to Fla. Stat. § 121.031(5);  
309
- 310 k. School Police officers: The home addresses, telephone numbers, and places  
311 of employment of the spouses and children of School Police officers and the  
312 names and locations of the schools and day care facilities attended by their  
313 children, pursuant to Fla. Stat. § 119.07(3)(i);  
314
- 315 l. Certain employees: The home addresses, telephone numbers, and places of  
316 employment of the spouses and children (and the names and locations of the  
317 schools and day care facilities attended by their children) of certain  
318 employees, such as any who are former prosecutors; or current and former  
319 human resources, labor relations, or employee relations directors, assistant  
320 directors, managers, or assistant managers, whose duties include(d) hiring  
321 and firing employees, labor contract negotiation, administration, or other  
322 personnel-related duties, as specified in Fla. Stat. § 119.07(3)(i);  
323
- 324 m. Answer sheets and examination questions of exams administered by the  
325 District for employment purposes, in accordance with Fla. Stat. § 119.07(3)(a);  
326
- 327 n. Medical information pertaining to a prospective, current, or former Board  
328 members or District employee which, if disclosed, would identify that person,  
329 in accordance with Fla. Stat. § 119.07(3)(v); and information relating to the  
330 medical condition or status of any person covered by District insurance  
331 benefits, under Fla. Stat. § 760.50(5);  
332
- 333 o. The identify of a whistle-blower (and, if there is an investigation, other  
334 information received during the investigation) under Fla. Stat. § 112.3188;  
335
- 336 p. Ridesharing information provided to the District for the purpose of forming a  
337 ridesharing arrangement, pursuant to Fla. Stat. § 119.07(3)(j);  
338
- 339 q. Appraisals, offers, and counter offers relating to the purchase of real property  
340 pursuant to Fla. Stat. § 235.054;  
341
- 342 r. Sealed responses to request for bids or proposals, until such time as they are

- 343                   publicly opened pursuant to Fla. Stat. §119.07(3)(m);  
344  
345           s. The District Auditor's workpapers, notes, and preliminary or draft reports, until  
346           the audit is completed by providing the final report to the School Board, as set  
347           forth in Fla. Stat. § 119.07(3)(z) and Ch. 95-399 § 2, Laws of Fla.;  
348  
349           t. Legal work product prepared by an attorney exclusively for civil or criminal  
350           litigation pursuant to Fla. Stat. § 119.07(3)(l);  
351  
352           u. Data processing software obtained under a licensing agreement which  
353           prevents its disclosure, and data processing software designated by the Board  
354           as "sensitive" pursuant to Fla. Stat. § 119.083;  
355  
356           v. The identity of donors and prospective donors to direct-support organizations,  
357           in accordance with Fla. Stat. § 237.40(4);  
358  
359           w. Work product developed in preparation for collective bargaining pursuant to  
360           Fla. Stat. § 447.605; and  
361  
362           x. Various other exemptions and confidentiality requirements set forth in Fla.  
363           Stat. § 119.07 and other state and federal statutory provisions, as explained in  
364           Part II of the annual Attorney General's *Government-in-the-Sunshine-Law*  
365           *Manual*.  
366  
367   20. District personnel may consult with the Office of Chief Counsel with questions  
368   about compliance with the provisions of this Policy.  
369  
370   21. This Policy shall be interpreted consistent with federal and Florida law.  
371  
372   STATUTORY AUTHORITY:   §§ 230.22(2); 230.23(17)(22); 230.23005(6), Fla. Stat.  
373   LAWS IMPLEMENTED:       § 112.3188; 119.01; 119.07; 119.072; 119.08; 119.083;  
374                                   119.084; 119.085; 119.011(1); 121.031(5); 228.093;  
375                                   230.23(1), (4)(m)5, (11); 230.2316(8); 231.262(4);  
376                                   231.291; 232.23; 235.054; 237.40(4); 447.605;  
377                                   760.50(5), Fla. Stat.; Ch. 95-399 § 2, Laws of Fla.  
378   HISTORY:                   5/19/99;    /   /2002.

Legal signoff:

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

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Date