

POLICY 2.041

5-G I recommend the Board approve the proposed revisions to Policy 2.041, entitled "Public Records."

[Contact: Nat Harrington, 434-8228.]

◆ **Development**

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 § 119.011(1), 120 and 373, Fla. Stat., and includes "all documents,
3 papers, letters, maps, books, tapes, photographs, films, sound recordings, data
4 processing software, or other material, regardless of the physical form,
5 characteristics, or means of transmission, made or received pursuant to law or
6 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 § 119.01(4), Fla. Stat.
- 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 § 119.07(1), Fla. Stat.

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 334046, 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 §119.07(1)(a) or (b), Fla.
63 Stat. or 119.08(3), Fla. Stat. (if applicable), or as noted in the Schedule of Fees in
64 Section (9).

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

<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 § 119.07(1)(a), Fla. Stat. 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 §

110 119.07(1)(b), Fla. Stat.

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 § 119.07(1)(b), Fla.
127 Stat., the term shall include data processing hardware, software, or
128 services; and/or communications, supplies, personnel, facility resources,
129 maintenance, and technology training required to fulfill a given public
130 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 §§ 119.07(3) and 231.291, Fla.
197 Stat. 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 § 119.083(5), Fla.**
224 **Stat. The District is not required to incur additional costs to convert its existing**
225 **electronic records which are maintained in a mainframe computer data system in**
226 **some standard format into another format, pursuant to Fla. Attorney General**
227 **Opinion 97-39. Electronic copies of non-exempt computer files will be provided in**

228 the format in which they are maintained by the District, pursuant to Fla. Attorney
229 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 § 119.01,
233 Fla. Stat. 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 § 119.011, Fla. Stat.; b) review
246 the 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, privacy requirements for pupil records and reports under
255 § 228.093(3)(d), Fla. Stat., do not permit releasing pupil records in redacted
256 form; but it may be permissible to provide a summary of certain documents
257 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 § 228.093(3)(a)2, Fla. Stat.

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 state
269 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 § 228.093, Fla. Stat., and
276 pupil cumulative records under § 232.23(1) (unless an exception applies under
277 § 228.093(3)(d)):

278
279 b. Certain letters mentioning pupils, received by Board members, the
280 Superintendent, or other District personnel, which constitute pupil records
281 under § 228.093, Fla. Stat., 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 § 230.23(4)(m)5:

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

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

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

294
295 g. Various portions of personnel records as specified in §§ 119.07(3) and
296 231.291, Fla. Stat., and as defined in § 231.291(4) and interpreted in DOE
297 General Counsel's Opinion 02-01, Advisory Opinions of the Florida Attorney
298 General, 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 §
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 § 231.291, 231.262(4), or
306 119.07(3)(u);
307
- 308 j. Lists of retiree names and addresses, pursuant to § 121.031(5), Fla. Stat.;
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 § 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 other
318 employees, such as any who are former prosecutors, or current and former
319 human resource, 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 § 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 § 119.07(3)(a), Fla.
326 Stat.;
327
- 328 n. Medical information pertaining to a prospective, current, or former Board
329 members or District employee which, if disclosed, would identify that person,
330 in accordance with § 119.07(3)(v), Fla. Stat.; and information relating to the
331 medical condition or status of any person covered by District insurance
332 benefits, under 760.50(5);
333
- 334 o. The identify of a whistle-blower (and, if there is an investigation, other
335 information received during the investigation) under § 112.3188, Fla. Stat.;
336
- 337 p. Ridesharing information provided to the District for the purpose of forming a
338 ridesharing arrangement, pursuant to Section § 119.07(3)(j), Fla. Stat.;
339
- 340 q. Appraisals, offers, and counter offers relating to the purchase of real property
341 pursuant to § 235.054, Fla. Stat.;
342

- 343 r. Sealed responses to request for bids or proposals, until such time as they are
344 publicly opened pursuant to §119.07(3)(m) Fla. Stat.;
345
- 346 s. The District Auditor's workpapers, notes, and preliminary or draft reports, until
347 the audit is completed by providing the final report to the School Board, as set
348 forth in § 119.07(3)(z) and Ch. 95-399 § 2, Laws of Fla.;
349
- 350 t. Legal records prepared by an attorney exclusively for civil or criminal litigation
351 pursuant to § 119.07(3)(l), Fla. Stat., and litigation files regarding students or
352 employees while the case is active;
353
- 354 u. Data processing software obtained under a licensing agreement which
355 prevents its disclosure, and data processing software designated by the Board
356 as "sensitive" pursuant to § 119.083, Fla. Stat.;
357
- 358 v. The identity of donors and prospective donors to direct-support organizations,
359 in accordance with § 237.40(4), Fla. Stat.;
360
- 361 w. Work product developed in preparation for collective bargaining pursuant to §
362 447.605, Fla. Stat.; and
363
- 364 x. Various additional exemptions and confidentiality requirements set forth in
365 Chapter 119.07 and other state and federal statutory provisions, as explained
366 in Part II of the annual Attorney General's *Government-in-the-Sunshine-Law*
367 *Manual*.
368

369 20. District personnel may consult with the Office of Chief Counsel with questions
370 about compliance with the provisions of this Policy.
371

372 21. This Policy shall be interpreted consistent with federal and Florida law.
373

374 STATUTORY AUTHORITY: §§ 230.22(2); 230.23(17)(22); 230.23005(6), Fla. Stat.
375 LAWS IMPLEMENTED: § 112.3188; 119.01; 119.07; 119.072; 119.08; 119.083;
376 119.084; 119.085; 119.011(1); 121.031(5); 228.093;
377 230.23(1), (4)(m)5, (11); 230.2316(8); 231.262(4);
378 231.291; 232.23; 235.054; 237.40(4); 447.605;
379 760.50(5), Fla. Stat.; Ch. 95-399 § 2, Laws of Fla.
380 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