



POLICY 5.50

5-E I recommend the Board approve the proposed revision to Policy 5.50, entitled "Student Records."

[Contact: Ron Armstrong, 434-8821; JulieAnn Allison.]

Development

CONSENT ITEM

- This Policy revision updates the Policy and addresses several issues that commonly arise concerning student records.
- The Policy implements Florida Statute § 1002.22, State Board of Education Rule 6A-1.0955, and federal law.

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POLICY 5.50
STUDENT RECORDS

1. Purpose.-- The Board and Superintendent affirm their responsibility for establishing student records procedures compliant with law, including Fla. Stat. § 1002.22, State Board of Education Rule 6A-1.0955, 20 U.S.C. 1232g, and 34 C.F.R. Part 99. Personnel who handle student records are responsible for being acquainted with those laws, which this Policy implements and supplements.
2. Annual Notice of FERPA Rights.-- An annual notice of parents' (and adult students') rights under Fla. Stat. § 1002.22, regarding student records, shall be published in the Student and Family Handbook. This annual notice shall include, but is not limited to, the following:
 - a. Right of access, right of waiver of access, right to challenge and hearing (pursuant to Policy 5.1816), and right of privacy;
 - b. Notice of the location and availability of this Policy on education records; and
 - c. The designation of certain non-School District agency personnel as "other school officials" who may have a "legitimate educational interest" in student records information.
3. Access by "Other School Officials."-- Joint agreements, which provide for the exchange of information about students, may be negotiated with the Palm Beach County Health Department, the Florida Department of Health, ~~and Rehabilitative Services~~ Florida Department of Children and Families and other agencies in specific circumstances where agency personnel have a legitimate educational interest in students jointly served, and brought to the School Board for approval, and such agency personnel are therefore designated by the Board as "other school officials" who may have a "legitimate educational interest" in student records information, pursuant to the Board's authority under 34 C.F.R. § 99.31(a)(1); 34 C.F.R. § 99.7(3)(iii); and Fla. Admin. Code R. 6A-1.0955(6)(h).
 - a. As required Fla. Stat. § 1002.22(3)(d)2, the agreement with such agencies shall specify that the agency shall impose safeguards to limit access only to those personnel "who have legitimate educational interests in the information contained in the records." Legitimate educational interests are defined as the need to review an education record in order to fulfill the employee's professional responsibilities and complete job duties in performing an official task that requires access to information in the education records of students jointly served.
 - b. Moreover, pursuant to State Board of Education Rule 6A-1.0955(6)(g), such inter-agency agreements shall allow personally-identifiable student information

39 to be disclosed to such agencies “only on the condition that the party to whom
40 the information is disclosed shall not disclose the information to any other
41 party without prior written consent of the adult student or the parent or
42 guardian of the pupil, as appropriate.”

43 c. The scope and extent of legitimate educational interests that “other school
44 officials” have will vary depending on the purpose of their need for access.
45 For example, a yearbook vendor hired to publish a school’s yearbook will have
46 a very limited scope of student information in which he/she has legitimate
47 educational interests: only the amount needed to complete the task under
48 contract. By contrast, an attorney retained by the District to defend a case
49 would have a much greater scope of legitimate educational interests—in many
50 cases, it could include the entire student-records file, when such access is
51 needed to fulfill the attorney’s professional responsibility. The District has the
52 sole authority to determine the scope of legitimate educational interests held
53 by “other school officials.”

54 d. Pursuant to the Board’s authority under 34 C.F.R. § 99.31(a)(1); 34 C.F.R. §
55 99.7(3)(iii); and Fla. Admin. Code Rule 6A-1.0955(6)(h), the District hereby
56 designates “other school officials” who shall be deemed to have a “legitimate
57 educational interest” in student records information.

58 i. The Board designates such “school officials” to include an administrator,
59 supervisor, instructor, or support staff member (including health or
60 medical staff and school police), or a School Board member, who needs
61 to access student records information in order to carry out his or her
62 official duties or fulfill his/her professional responsibility.

63 ii. “Other school officials” shall also include persons such as: the District’s
64 health care partners and other governmental and social agencies jointly
65 serving students, to the extent student records information is needed to
66 provide and/or evaluate health services and governmental/social services
67 to students; a person or company with whom the school has contracted or
68 partnered to perform a special task (such as a class ring or yearbook
69 vendor under contract with the school, or an attorney, auditor, nurse,
70 psychologist, medical consultant, or therapist under contract with the
71 District); a university student who is placed in a school under a
72 Professional Development School Partnership or student-teaching
73 internship; and a parent or student or other person serving on an official
74 committee (such as a disciplinary or grievance committee) or assisting
75 another school official in performing his or her tasks; or an official of a
76 charter school of this District (to access name/address mailing labels of
77 District students to the extent legitimately needed for recruiting purposes
78 and only upon agreement not to redisclose the information to third parties.

79 **4. Transfer of Records**

80 a. The school and School District will disclose education records without consent
81 to officials of another school district in which a student seeks or intends to
82 enroll, upon request of those officials.

83 b. Federal law requires the District to “facilitate the transfer of disciplinary
84 records, with respect to a suspension or expulsion . . . to any private or public
85 elementary school or secondary school for any student who is enrolled or
86 seeks, intends, or is instructed to enroll, on a full- or part-time basis, in the
87 school.” 20 U.S.C. § 7165(b).

88 **5. Access by Parents and Adult Students.-- Parents and adult students shall be**
89 **granted access within 30 days after receipt of a request by the institution.**

90 a. Both parents’ right of access will be honored by the school unless there is a
91 binding legal document or court order, on file at the school, specifically
92 denying the right to one or both parents.

93 b. A parent or adult student shall have the right, upon request, to be shown any
94 record or report relating to that student and maintained by any public
95 educational institution. However, if the record or report includes information on
96 more than one pupil, the parent or adult student shall be entitled to receive, or
97 be informed of, only the part of the record that pertains to the student who is
98 the subject of the request; the other pupils’ information must be redacted. A
99 minimal fee is charged for these copies. The principal will make arrangements
100 for access and notify the parent or eligible student of the time and place where
101 the records may be inspected.

102 **6. Access by Military Recruiters and Institutions of Higher Learning.—Because**
103 **the School Board does not have a directory information Policy, information that**
104 **many school districts have designated as “directory information” will be released**
105 **only upon written parental consent. However, as part of the No Child Left Behind**
106 **Act of 2001, Congress has required that school districts receiving assistance under**
107 **the Elementary and Secondary Education Act of 1965 (ESEA) must give military**
108 **recruiters access to certain directory information.**

109 a. Federal law (20 U.S.C. § 7908(a)(1)) now requires that high schools “shall
110 provide, on a request made by military recruiters or an institution of higher
111 education, access to secondary school students’ names, addresses, and
112 telephone listings.” This requirement is also found in 10 U.S.C. §
113 503(c)(1)(A)(ii). The information will be used for military recruiting purposes
114 and other legitimate purposes such as informing students of scholarship
115 opportunities at institutions of higher learning. Parental consent is not required
116 before providing the information to recruiters and institutions of colleges,
117 although parents may “opt out.”

118 b. In accordance with those laws, military recruiters are entitled to receive the
119 name, address, and telephone listing of high school students, unless the
120 parent or student have advised the school that they do not want the student's
121 information to be disclosed without specific prior written consent.

122 c. "A secondary school student or the parent of the student may request that the
123 student's name, address, and telephone listing . . . not be released without
124 prior written parental consent" to military recruiters or institutions of higher
125 learning, 20 U.S.C. § 7908(a)(2). Therefore, If a high school student or parent
126 does not want the school or the District to disclose one or more of these
127 categories of information (name, address, or telephone) to military recruiters or
128 officials of institutions of higher learning without prior written consent, the
129 parent or student must notify the school principal in writing within 10 days after
130 the annual distribution of the Student and Family Handbook (and the principal
131 should also forward your request to the Department of Student Services and
132 Home Education).

133 **7. Exemption from Public Records Requests.--** Student records are confidential
134 and exempt from the Public Records Act. They cannot be obtained through public
135 records requests. Even student records that have been redacted to obscure
136 personally-identifiable information remain confidential and exempt from the Public
137 Records Act, pursuant to *Florida State University v. Hatton*, 672 So. 2d 576, 580
138 (Fla. 1st DCA 1996). However, when a personnel investigative report contains any
139 personally-identifiable student information, "all student identifying information [shall]
140 be redacted from the report prior to it being released." *Johnson v. Deluz*, 29 Fla. L.
141 Weekly D598 (Fla. 4th DCA 2004).

142 **8. Production of Student Records Pursuant to a Subpoena or Court Order.--** If a
143 party to litigation presents a subpoena or court order for release of student records,
144 the District shall ensure that the "student's parent are notified of the order or
145 subpoena in advance of compliance therewith by the educational institution or
146 agency." Fla. Stat. § 1002.22(3)(d)11.

147 a. As stated in 34 C.F.R. §99.31(a)(9)(ii), the purpose of this notice is to allow the
148 student and parents to object or seek protective action. Non-party students
149 and parents shall receive 10 days' notice; and students and parents who are a
150 party to the litigation shall receive 5 days' notice.

151 b. Litigants seeking student records should bear in mind that discovery of
152 confidential records is limited by law. The requestor of confidential records
153 must demonstrate "extraordinary necessity" or "exceptional circumstances."
154 See *State, Department of Highway Safety and Motor Vehicles v. Krejci*
155 *Company Inc.*, 570 So. 2d 1322, 1324-25 (Fla. 2d DCA 1990); *Henderson v.*
156 *Perez*, 835 So.2d 390 (Fla. 2d DCA 2003). See also *Florida State University*
157 *v. Hatton*, 672 So. 2d 576, 580 (Fla. 1st DCA 1996) (requiring a balancing test

158 to determine whether the requestors have a legitimate need that outweighs the
159 students' express, substantial statutory privacy rights in the confidentiality of
160 student information.)

161 c. Moreover, if the court allows discovery of confidential records, it should take
162 "all precaution to ensure the confidentiality of the records." *Krejci Co. Inc.*, 570
163 So. 2d at 1325. For example, Fla. Admin. Code R. 6A-1.0955(6)(g)2
164 delineates that: "Personally identifiable information shall be disclosed only on
165 the condition that the party to whom the information is disclosed shall not
166 disclose the information to any other party with out prior written consent of the
167 adult student or the parent or guardian of the pupil, as appropriate." Other
168 appropriate means of safeguarding the information would be: clearing the
169 courtroom if documents are allowed to be submitted at trial; instructing jurors
170 not to redisclose the information, and sealing such records from public access
171 in court files.

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173 STATUTORY AUTHORITY: § 1001.41(2); 1001.43(8); 1002.22(4), Fla. Stat; 6A-1.0955
174 ~~SBER~~

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176 LAWS IMPLEMENTED: § 1002.22, Fla. Stat.; 20 U.S.C. § 1232g; 34 C.F.R. Part 99
177 6A-1.0955-SBER.

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179 RULE SUPPLEMENTED: State Board of Education Rule 6A-1.0955

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181 HISTORY: 2/18/72; 2/28/72; 1/18/78; 4/6/83; / /04

Legal Signoff:

The Legal Department has reviewed the proposed revision of Policy 5.50 and finds it legally sufficient for development by the Board.

Attorney

Date