

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