

## **FACT SHEET:**

### **DUAL RELATIONSHIPS & STUDENT PRIVACY RIGHTS**

**Developed by the District's Privacy Officer and General Counsel**

#### **Introduction**

The School Board of Broward County, Florida (SBBC) is committed to protecting the privacy rights of all students, in alignment with the Family Educational Rights and Privacy Act (FERPA).

All information from an education record is confidential and may only be disclosed with the consent of the parent (or student age 18 or over), unless a FERPA-permitted exception to consent applies. SBBC employees who work with education records must ensure they are protecting the records in compliance with FERPA. From time to time, SBBC employees may find themselves in **dual relationships**. This fact sheet was developed as a reminder – as well as a springboard for further discussion – to help everyone safeguard the privacy of education records.

#### **Dual relationships - definition**

A dual relationship (as relevant to this fact sheet) means the SBBC employee functions in two roles in relation to a student or students they teach, serve or know. One role is the job role. The other role is not directly related to the job. Often, the dual relationship cannot be avoided.

#### **Here are some examples:**

- **Scenario 1:** A student is dating his teacher's daughter.
- **Scenario 2:** A behavior specialist at a District school also works in a summer program, and one of his former students attends the program.
- **Scenario 3:** An Exceptional Student Education (ESE) teacher at "School A" has a niece that attends "School B." The niece is in an ESE classroom.
- **Scenario 4:** An Information Management Technician (IMT) at a District school also works part time at a charter school.
- **Scenario 5:** A Family Counselor at a District school also volunteers at a local mental health center.
- **Scenario 6:** A nurse at a District school provides treatment to a student who happens to be the friend of the nurse's son.

## Guiding Principles

1. All personally identifiable information (PII) from an education record is confidential.
2. Under the Family Educational Rights and Privacy Act (FERPA), parents or students age 18 or over shall provide written consent before a school may disclose education records to a third party...unless a FERPA exception to consent is applicable. (The complete list of FERPA exceptions to consent applicable to K-12 districts may be found in Policy 1480 (formerly 5100.1), *Student Records: Confidentiality and Family Education Rights*.)
3. One exception to consent that often applies to SBBC employees: Disclosures are permissible to **school officials** who have a **legitimate educational interest** to access or receive the information. A legitimate educational interest means they need the information to fulfill their professional responsibilities as SBBC employees.
4. Those SBBC employees who find themselves in dual relationships must “separate out” their roles prior to accessing or disclosing confidential information, to ensure the disclosure is pursuant to their “school official” role. One helpful way to “separate out” roles is to be transparent – inform a supervisor or colleague of the dual relationship and discuss possible solutions and action steps.
5. The person (role) responsible for disclosing information from education records pursuant to a signed, written consent form is the custodian of the records (the Principal...or the Principal’s designee, the Registrar, for example). So even with a consent form, an SBBC employee may not readily disclose information from an education record if he or she is not the custodian of the record. The parent / student age 18 or over has to go through the **proper channel** (directly to the custodian of the record to access the education record.)
6. SBBC employees are required to abide by federal privacy law (including FERPA), state privacy law (including Florida Statute 1002.22), District privacy policy (including Policy 1480) and the ethics of their profession.
7. Rule 6A-10.081 (a)(9), Florida Administrative Code, Principles of Professional Conduct for the Education Profession in Florida, states that “Obligation to the student requires that the individual [Florida educator]...Shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law.”

**Going back to the scenarios listed on page 1...more to the story:**

- **Scenario 1:** A teacher's student is dating the teacher's daughter. The teacher is not happy that her daughter is dating the student because she is aware of the student's behavioral issues in her classroom. The teacher is considering sharing information she knows about the student to convince her daughter to stop dating him.

**The issue:**

The teacher is a "school official" when teaching the student...but not when dealing with matters pertaining to her daughter dating the student.

If the teacher discloses information from the student's education record to her daughter, the teacher will be in violation of FERPA.

With today's increase in social media, texting, and emails, verbal disclosures often get documented. For example, the daughter could text her boyfriend, "My Mom told me you are failing her class."

**What the teacher could do:**

When dealing with the dating issues, the teacher should focus on the information she learns or observes in her parent role and be careful NOT to disclose information from the student's education record. The teacher can discuss her off-campus observations of the student with her daughter.

- **Scenario 2:** A behavior specialist at a District school also works in a summer program, and one of his former students attends the program. The behavior specialist, who has access to a District database, prints out a copy of the student's record for the parent.

**The issue:**

The behavior specialist – while working in the summer program – is not a "school official" to the former student. If the behavior specialist accesses and discloses information from the former student's record to the parent, he or she will be in violation of FERPA.

**Cautions:**

- (1) Under FERPA, parents are entitled to access (review) their children's education records...UNLESS there is a court order stating otherwise.

- (2) Some District databases have an electronic “fingerprint” – they track the names of employees and the education records they access.
- (3) District employees (including those at all levels of SBBC) who have access to databases containing education records must refrain from accessing their own child’s records from the database. They must obtain their child’s education records through the proper channel (the custodian of the records).

**What the behavior specialist could do:**

Advise the parent to go through the proper channel – directly to the record custodian, which is usually the principal or designee of the child’s current school (or last school attended).

Even if the parent gives the behavior specialist a signed consent form, it still must be presented to the record custodian for the information to be accessed and disclosed.

- **Scenario 3:** An Exceptional Student Education (ESE) teacher at “School A” has a niece that attends “School B.” The niece is in an ESE classroom. The ESE teacher reviews her niece’s Individualized Education Plan (IEP) and calls her sister to inquire about progress with the niece’s goals.

**The issue:**

The teacher is NOT a “school official” in her role as an aunt. If the teacher discloses information from the niece’s education record to her sister (her niece’s mother), the teacher will be in violation of FERPA.

**Caution:** Sometimes inadvertently, sometimes on purpose, family members will share the source (name of SBBC employee) of information they receive. If the information was received in violation of FERPA, it could negatively impact the source (for example, disciplinary action and/or reputational harm).

**What the teacher could do:**

If the teacher’s sister inquires about school-related information regarding the teacher’s niece, the teacher should direct her sister to contact the school directly to obtain the information.

- **Scenario 4:** An Information Management Technician (IMT) at a District school also works part time at a charter school. The charter schools asks the IMT to provide the names and addresses of all students at the school and tells the IMT the names and addresses are fine to provide because they are “directory information.”

**The issues:**

The IMT is not an SBBC “school official” in his job at the charter school and may not provide any SBBC information from education records to the charter school.

Even if the IMT was an SBBC school official in the charter school job, he would not be able to disclose the information. Here’s why:

Although names and addresses are Board-approved types of “directory information,” “disclosures to charter schools” are NOT a Board-approved purpose of disclosure. There are currently four Board-approved purposes of disclosure. The only one pertaining to disclosures to an educational agency is as follows: “to colleges, universities or other **institutes of higher education** in which the student is enrolled, may seek enrollment or may be recruited.” Charter schools do not meet the criteria.

Finally, even if charter schools did meet the criteria, the most important factor in disclosing directory information is the “opt out” preference (as indicated on the FERPA Opt-Out Notification Form from The Code Book of Student Conduct) of the parent or student age 18 or over. Custodians of records must first look at the “opt out” preference to see if a disclosure of directory information is permissible.

**What the IMT could do:**

Inform the charter school of (1) the distinction between his employment with SBBC and the charter school, and the FERPA-imposed limits, and (2) the criteria for “directory information” disclosures.

- **Scenario 5:** A Family Counselor at a District school also volunteers at a local mental health center. She notices one of the students she currently serves at the school in the waiting room of the mental health center. The student is there to see a different therapist.

**The issue:**

In most instances, it is not recommended for a student to receive therapy or counseling services, concurrently, from two separate providers. The two providers may be sending conflicting messages to the client (student) or “un-doing” each other’s work.

The Family Counselor must also remember that information from the sessions provided at the school are protected by FERPA.

**What the Family Counselor could do:**

Address the issue of the student having two different therapists / counselors with the student during the next session at the school. Let the student (and parent) know he or she was seen in the waiting room at the mental health center, and that seeing both providers may be counterproductive, and that terminating Family Counseling sessions should be considered.

It is imperative the Family Counselor obtain the written consent of the parent or student age 18 or over prior to disclosing any information from the school-based counseling sessions (where the progress notes and related documents are protected by FERPA), including information pertaining to the termination of Family Counseling services.

Note: in some instances, the Family Counselor may see a student in crisis who has an immediate need, even if that student is receiving treatment elsewhere. Such sessions should continue only for a limited time until the crisis is addressed. It is also recommended that the Family Counselor obtain written consent from the parent or student age 18 or over, to be able to inform (and coordinate services with) the outside therapist.

- **Scenario 6:** A nurse at a District school provides medical treatment to a student who happens to be the friend of the nurse's son. Later that night, she tells her son that his friend was in the school clinic today and that she provided services to the friend.

**The issues:**

Information regarding medical services provided to students on site at a school are protected by FERPA, and in some instances, they are also protected by the Health Insurance Portability and Accountability Act (HIPAA).

Some nurses providing services in school clinics are full-time SBBC employees, and some are contracted providers from outside agencies.

Whether the nurse is an SBBC employee or not, and whether the medical information is protected by FERPA only or both FERPA and HIPAA, the nurse may NOT disclose any of the information about the student to her son.

Remember, children talk to each other and their parents. If the nurse tells her son she treated his friend and discloses medical issues, the son may then tell his friend what her mother disclosed, and the friend may then inform his own parents, who may then inform the school.

**What the nurse could do:**

It is in the best interest of all involved if the nurse does not even mention to her son that she is treating his friend...and of course, not disclose any of the friend's medical information to her son. If the son learns about the clinic visit from his friend and then asks his mother (the nurse) about it, the nurse can say, "I have to protect your friend's privacy; I am not able to discuss this with you."

**Additional Resources**

For privacy notices, policy, forms and FAQs, please visit the District's Privacy Information Website at <http://www.browardschools.com/privacyinformation>.

If you have any privacy-related questions or concerns, contact Todd Sussman, Privacy Officer, Risk Management Department at (754) 321-1914.

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