

**OFFICE OF THE GENERAL COUNSEL and the PRIVACY OFFICER of
The School Board of Broward County, Florida**

FAQ ON DISCLOSURE OF STUDENT INFORMATION TO LAW ENFORCEMENT

Purpose

From time to time schools have received and will receive requests from law enforcement officers for **student personally identifiable information (PII)**. Broward County Public Schools (BCPS) strives to ensure the safety of all of our students and to collaborate with law enforcement as permitted by law. The School District is required by law to respect each student’s privacy rights and to disclose student information only in compliance with state and federal laws. BCPS will disclose student information to law enforcement officials only as permitted by law.

Guiding Principles

1. The federal laws are written by Congress and the state laws are written by the Florida Legislature. Florida law enforcement officers enforce the laws as written by the Florida Legislature and as they may be interpreted by the courts. They primarily enforce the criminal code.
2. Florida statutes mandate that “School Resource Officers [SROs] shall abide by district school board policies and shall consult with and coordinate activities through the school principal . . .” (§.1006.12(b), Fla. Stat.)
3. District School policies protect the privacy of student personally identifiable information (PII) in compliance with state and federal laws (1002.22 and 1002.221, 1002.222, Fla. Stat. and the Family Educational Rights and Privacy Act (FERPA) regulations, 34 CFR Part 99.) All SROs must comply with District School Board policies adopted to protect the privacy of student personally identifiable information. These policies include but are not limited to, Policy 5.8, *Code of Student Conduct* (which contains the FERPA Notice; Collection, Use and Disclosure of Social Security Numbers of Students notice; Protection of Pupil Rights Amendment [PPRA] notice; and the Health Insurance Portability and Accountability Act [HIPAA] notice) and Policy 8530, *Student Records: Confidentiality and Family Educational Rights*.
4. The Florida education code requires school principals to disclose student PII “only as provided in chapter 1002” Fla. Stat. (§1003.25(1), Fla. Stat.). Section 1002.221 provides that education records are confidential and exempt from the Public Records Act and may only be disclosed in compliance with the Family Educational Rights and Privacy Act (FERPA - 20 USC §1232g) and its implementing regulations (34 CFR §99). Note that FERPA permits disclosures in certain situations. It does not require that disclosures be made.
5. An important FERPA provision is that when all student personally identifiable information (PII) (including characteristics that may identify a student in the school community) is removed from an education record, then the de-identified record may be disclosed without prior written consent of the parent or student age 18 or over (De-identified records - 34 C.F.R. §99.31(b)).

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6. The release of student information to law enforcement officers must be made in compliance with the law, School Board policies, and a related, executed interagency agreement. Such information may be released with the written consent of the parent/legal guardian or “eligible student” (age 18 or over or attending a postsecondary institution) or pursuant to an exception provided in the FERPA regulations, as discussed below. In addition, the Child Abuse Prevention and Treatment Act (CAPTA) (42 USC §5101) allows disclosure of student information when it is in the best interest of the child who is an alleged victim of child abuse.
7. A *school resource officer* (“SRO”) is a law enforcement officer and an employee of a law enforcement agency (police department) of the county or local municipality, and as such is “responsible to the law enforcement agency in all matters relating to [his/her] employment, subject to agreements between a district school board and a law enforcement agency. Activities conducted by [SROs] which are part of the regular instructional program of the school shall be under the direction of the school principal.” (§1006.12(b), Fla. Stat.)
8. A *school police officer* is a law enforcement officer who is employed by Broward County Public Schools and works in the Special Investigative Unit (SIU). A school police officer has the power to make arrests for violations of law on district school property and to arrest persons, whether on or off such property, who violate any law on such property.
9. Law enforcement officers are authorized to arrest persons (including students and employees), as provided by law, whether on or off school property (§1006.12, Fla. Stat.).
10. When student records are provided for inspection and copying, as permitted by law, the custodian of the record must always be present during the inspection, and the school may charge for photocopies as allowed by Board Policy 8530, *Student Records: Confidentiality and Family Education Rights*.
11. Published school yearbooks (which contain the names and photographs of students, information which may be useful to law enforcement officers) are public records and as such are available for inspection and copying by any citizen. The request should be submitted to the Public Records office in the Risk Management Department (recordrequests@browardschools.com).
12. Serious allegations of misconduct are investigated by SIU. If an employee is found to have failed to comply with Board Policy, the penalty may range from reprimand to dismissal under Board Policy 4.9, Section II, Category B-(r). In addition, the school district is mandated to report all legally sufficient complaints made against all instructional employees to the Florida Department of Education (FL DOE) (§1012.796(1)(d), Fla. Stat.). Moreover, a violation of state laws may result in court litigation, and if the court awards injunctive relief it may also award attorney’s fees and court costs (§1002.22(4), Fla. Stat.). A determination that a violation of FERPA has occurred may result in the loss of federal funds (34 CFR §99.67).

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Access to student files and electronic databases

Question No. 1:

Should school employees allow the SRO to access file cabinets containing student files?

Answer:

No. Such open access is a clear violation of FERPA and sections 1002.22, 1002.21, and 1002.22, Fla. Stat. Access to specific student information is allowed by law only with the signed written consent of the parent or “eligible student” or in compliance with a FERPA exception to the written consent requirement.

Question No. 2:

Should an SRO be provided with a password to access student databases at BCPS?

Answer:

No. Such open access is a clear violation of FERPA and sections 1002.22, 1002.21, and 1002.22, Fla. Stat. Access to specific student information is allowed by law only with the signed written consent of the parent or “eligible student” or in compliance with a FERPA exception to the written consent requirement.

Note: School employees may not do “indirectly” what is not allowed by law to be done “directly.” In other words, if no disclosure of student PII from school databases is allowed by law without written consent, no SBBC employee (including employees in SIU) may disclose said information to other law enforcement officers.

Directory information

Question No. 3:

Is the school’s disclosure of a student’s contact information to a law enforcement officer a permissible disclosure of directory information in compliance with Board Policy?

Answer:

No. The School Board designates “directory information” and authorized recipients. The Board policy (5.8) authorizes the release of student contact information to selected recipients for limited purposes. Law enforcement officers are not one of the selected recipients. **PLEASE NOTE:** Parents have the right to opt out of the disclosure of directory information. Before any disclosure of student contact information, the FERPA Opt-Out Notification form must be reviewed. The Code Book for Student Conduct (with FERPA Opt-Out Notification form) is available at <https://www.browardschools.com/Page/38107>.

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Information on truant students

Question No. 4:

If a school prepares a list of truant students, may such a list be disclosed to law enforcement officers for investigative purposes?

Answer:

Pursuant to FERPA and state laws (1002.22, 1002.221, and 1002.222, Fla. Stat.), public schools may not release the list of truant students to law enforcement officers without the written consent of the parent, guardian or eligible student. Please see AGO 81-78, List of truant students, dated October 16, 1981, available at <http://www.myfloridalegal.com/ago.nsf/Opinions/FAB125CDDFBB3FB285256586006B7F10>.

FERPA selected exceptions -- Disclosures without written consent: Emergency, subpoena, court order, Department of Juvenile Justice (DJJ)

Question No. 5:

If the parent has not provided a signed written consent, under what circumstances may a school lawfully disclose student PII From education records to a law enforcement officer?

Answer:

If the school does not have written consent for the disclosure of the student PII, the disclosure may be made in very limited situations. If appropriate, the school may request the parent or eligible student to provide the required written consent. If the parent or eligible student refuses to provide written consent, a school may lawfully disclose student PII to a law enforcement officer only on the following circumstances:

- A. A health or safety emergency as defined in FERPA -- examples include: a report that a child is missing, a report that a student has brought a gun to school, or the school principal's declaration of an "articulable and significant threat to the health or safety" in compliance with FERPA. The information disclosed must be limited to what is necessary to address the emergency. The school principal or designee may make a determination, in collaboration with the school's assigned Regional Superintendent Office or Associate Superintendent Office, that an "emergency" exists that meets the FERPA requirements. For child abuse situations, please see Question No. 6 below.
- B. A lawfully issued subpoena or a court order that requires the disclosure of student records to a law enforcement agency. However, under FERPA, an advance notice (10 calendar days) of intent to comply with the subpoena or court order must be provided to the parent and allow the parent an opportunity to challenge or seek modification of the subpoena or court order. The notice is available at www.browardschools.com/privacyinformation. No information may be disclosed until the 10-day period has expired (FERPA 34 CFR §99.31(a)(9)).

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EXCEPTION: No advance notice is required by FERPA when the subpoena or court order specifically requires no disclosure about the subpoena or court order. This may happen with confidential criminal investigations. In such event, the school must not send the notice mentioned above and may not disclose to anyone that a subpoena has been received or that a response has been provided.

- C. Disclosures to the Department of Juvenile Justice (DJJ) are allowed by FERPA in order to effectively serve the student. FERPA requires:
1. The disclosure must be related to the juvenile justice system's ability to effectively serve, prior to adjudication, the student whose records are released;
 2. The officials to whom the information is disclosed must certify, in writing, that the records will not be re-disclosed to any other party except as provided by law.

NOTE: Once adjudication has been rendered by the court, no further disclosure is authorized by FERPA.

- D. Pursuant to an executed interagency agreement with a relevant party.

Child abuse investigations

Question No. 6:

- A. Is it lawful for schools to provide student PII to Department of Children and Families (DCF) investigators or Broward Sheriff's Office Child Protective Investigations Section (BSO CPIS) who show proper identification and are investigating a child abuse/neglect complaint?
- B. What procedures must the school follow if an investigator takes a child into custody at the school?

Answer:

- A. Yes. Student PII may be lawfully disclosed to DCF or BSO CPIS investigators pursuant to the Child Abuse Prevention and Treatment Act of 1974 (CAPTA) provisions. In the event of an emergency, please refer to the answer (A) to Question 5 above.

Please note that the child abuse investigator has the right to determine who is present during the child's interview. In the event the investigator does not allow a school official to be present, it might be prudent to provide a room with a window so that a designated school employee may monitor the student's well-being and, as appropriate, request a break to allow the student to regain composure to assist with the investigation.

- B. The school must follow the procedures set forth in Board Policy 1162, *Taking a Dependent Child Into Custody*, and must ensure that the Release of custody form, attached to the policy, is completed.

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The policy and the release form are available at:

<http://www.broward.k12.fl.us/sbbcpolicies/docs/P1162.000.pdf>.

Question No. 7:

Does a BSO CPIS investigator need to present a subpoena or a court order to obtain a copy of a school surveillance video pertaining to an allegation of child abuse by a school employee?

Answer:

No. The investigation – and gathering of the evidence pertaining to a child abuse allegation – falls under the CAPTA exception to FERPA. However, if the parent has filed a child abuse complaint against the school or school employee, most likely the parent would be willing to provide written consent for the release of the video recording and other student PII to the investigator.

Information about a deceased student

Question No. 8:

When DCF or law enforcement officers request the school to provide PII of a deceased student, should the school provide the requested information without the signed written consent of the parent?

Answer:

It depends on the age of the student. If the deceased student was a minor, student PII may not be released without signed written parental consent; the FERPA rights of parents continue. In general, if the deceased student was an adult, “directory information” may be released in compliance with the most recent FERPA Opt-Out Notification form on file and the parent’s consent is not required.

If a health or safety emergency exists, please see answer (A) to question 5 above.

Investigations of off-campus crimes

Question No. 9:

When law enforcement officers request student PII for an investigation of a crime that took place off campus, should the school provide the requested information without the written consent of the parent?

Answer:

No. Written consent of the parent/legal guardian or “eligible student” is required by FERPA.

In case of an emergency, please see answer (A) to question 5 above.

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Investigations of on-campus accidents or crimes

Question No. 10

When law enforcement officers request student PII for an investigation of an accident or crime that took place on campus, should the school provide the requested information without the written consent of the parent?

Answer:

Yes, but only if the law enforcement officer is a school board employee (member of the District's SIU department) or a contracted officer (SRO at the school where the accident or crime occurred). In these cases, only the student PII that is pertinent to the investigation shall be disclosed. If the law enforcement officer is not part of SIU or is not an SRO at the school, that individual will need a court order or subpoena for SBBC to disclose the student PII, unless a FERPA exception applies (see Question No. 5 above for examples).

Arrest of a student on campus

Question No. 11:

What procedures are the schools required to follow when a student is arrested on campus?

Answer:

The school must contact SIU right away. When law enforcement takes custody of a child away from the school officials, the school must document that the child has been arrested (keep a copy of the arrest warrant, if available) and must immediately notify the parent.

Interviewing students during school hours

Question No. 12:

When law enforcement officers request to interview a student during school hours as part of an investigation of a crime that took place off campus, should the school allow the interview to take place during school hours and without the written consent of the parent?

Answer:

No. Investigations of crimes that took place off campus must be done outside of school hours, except in extreme and exceptional circumstances. The student's learning activities must not be interrupted when the student can be interviewed after school hours. Even if the interview were to take place after school hours at the school, parental consent must be obtained. The Florida Department of Law Enforcement (FDLE) Guidelines for Interviews of Juveniles (FDLE Policy 4.7, "Interviewing A Juvenile," F3) provide:

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A parent should be allowed to be present during the interview unless there is an investigative reason to deny such a request. The reason for denial must be documented in an investigative report. **If a juvenile requests that his/her parent or guardian be present prior to questioning, the interview should be delayed for a reasonable time in order to give such person the ability to be present.**

- Sworn members [law enforcement officers] will adhere to all school board policies in reference to conducting interviews on school property.
- If the juvenile to be questioned is a victim, witness, or the situation is one of **child abuse**, there is no obligation to have the parent(s) contacted or present.

(Emphasis added.)

Law enforcement records

Question No. 13:

Are “law enforcement records” subject to FERPA?

Answer:

“Law enforcement records” are not subject to FERPA, but to qualify as “law enforcement records,” the records must be (a) created by a law enforcement officer (b) for a law enforcement purpose and (c) must be maintained by the law enforcement unit – not by the school (34 CFR §99.8). For example, investigations of employees or students for disciplinary purposes are not law enforcement records. Records of investigations of alleged violations of local, state or federal laws for law enforcement purposes are not subject to FERPA.

Record-keeping requirement: FERPA Disclosure Log

Question No. 14:

Does the school have to keep a record every time student information is requested and/or disclosed to the SRO or to other law enforcement officers?

Answer:

Yes, unless the school has received the signed written consent of the parent for the disclosure. Each request for student PII must be recorded in the FERPA Disclosure Log (an official SBBC form), available at www.browardschools.com/privacyinformation.

Each disclosure to a law enforcement officer must also be recorded in the FERPA Disclosure Log. The log must be maintained in the CUM folder for each student. The exceptions to the requirement to log the requests and disclosures are listed in the footnote on the FERPA Disclosure Log.

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Behavioral Threat Assessments

Question No. 15:

May SROs who participate in Behavioral Threat Assessment (BTA) meetings receive a copy of the Behavioral Threat Assessment document and/or education records used and discussed at the BTA meeting?

Answer:

For SROs participating in the Behavioral Threat Assessment meeting who have signed as a team member, the Principal or designee will provide the SRO, upon his/her request at the meeting, with any education records used and discussed during the SRO's participation in the Behavioral Threat Assessment Meeting at the respective participating SBBC school. In addition, if the SRO requests a copy of the Behavioral Threat Assessment document by the conclusion of the threat assessment meeting, SBBC shall provide it to the signatory SRO, via hardcopy or secure email.

The SRO may keep and retain all records received, provided that such records are retained and kept in accordance with Chapter 119, Florida Statutes and the District's safeguarding the confidentiality of education records, as included in Board-approved SRO agreements. The records may not be re-disclosed, except as required or permitted by law.

For further assistance, contact the Office of the General Counsel (754-321-2050), the Privacy Officer (754-321-1914), or the Special Investigative Unit (754-321-0725).

This FAQ is available at www.browardschools.com/privacyinformation.

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