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STUDENT RECORDS: CONFIDENTIALITY AND FAMILY EDUCATIONAL RIGHTS

EDUCATION RECORDS, ALSO CALLED STUDENT RECORDS, ARE OFFICIAL AND CONFIDENTIAL DOCUMENTS PROTECTED BY FLORIDA STATUTES 1002.22, 1002.221 AND THE FEDERAL FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT (FERPA), 20 U.S.C. 1232g. FERPA, ALSO KNOWN AS THE BUCKLEY AMENDMENT, DEFINES EDUCATION RECORDS AS RECORDS THAT SCHOOLS OR EDUCATIONAL AGENCIES MAINTAIN WHICH ARE DIRECTLY RELATED TO A STUDENT (SOME EXCEPTIONS APPLY, SEE SECTION II.B).

I. Introduction

- A. FERPA gives parents the right to review and question the accuracy of education records. These rights, in most instances, transfer to the student when the student turns 18 years old. For students aged 18 or over who are adjudged incompetent or unable to make certain decisions, the provisions of the individuals with disabilities education act (I.D.E.A) shall be compiled with as set forth in Policy 6000.4, Exceptional Student Education Policies & Procedures.
- B. The primary rights under FERPA are:
 - 1. The right to inspect and review education records;
 - 2. The right to seek to amend education records that are inaccurate, misleading, or in violation of the student's privacy rights; and
 - 3. The right to have limited control over the disclosure of information from education records.
- C. Other board policies address student information:
 - 1. Policy 8540, Student Records: Transfer, Retention And Disposal, defines the process for transferring, retaining and disposing of education records.
 - 2. Policy 4019, Protected Health Information, addresses individually identifiable health information covered by the health insurance portability and accountability act (HIPAA).

3. Education records, including health records, are protected by FERPA and exempt from meeting the requirements of the health insurance portability and accountability act (HIPAA) (see Section III.(A)(3)).
4. Education records are confidential and exempt from the Florida public records law (Chapter 119). See 1002.221, F.S.

RULES

II. Definitions

A. **Education records** are records maintained by a school district or by an individual or entity acting for the school district that contain information directly related to a student. Education records include, but are not limited to, school health records; a student's social security number; student's identification number, academic work completed; level of achievement records including grades, grade point average (GPA) and standardized achievement test scores; interim reports; enrollment documents; transcripts; academic improvement plans; intervention records; attendance data; evaluation reports that include standardized intelligence, aptitude and psychological test results; interest inventory results; Exceptional Student Education (ESE) files; disciplinary records, including suspension and expulsion records; family biographical background information; parent/teacher conference reports; special program eligibility; teacher or counselor ratings and observations; verified reports of serious or recurrent behavior patterns; Behavioral Threat Assessments (BTAs); records used in expulsion hearings; and any other evidence, knowledge, or information recorded in any medium, including but not limited to, handwriting, typewriting, print, magnetic tapes, film, computer media, video or audio tape, microfilm and microfiche, and digital records. Psychological files (including psychological evaluations created and/or maintained by school district staff); therapy and counseling records (including psychosocial assessments, therapeutic treatment plans, and therapy progress notes created and/or maintained by school district staff); and school (guidance) counseling records are also education records protected under FERPA as well as state laws, including Chapters 490 and 491, F.S.

B. **Records that are not considered education records under FERPA** include:

1. Records, such as personal notes, that are kept in the sole possession of the maker of the record, that are used only as a memory aid and not accessible or revealed to anyone except a temporary substitute of the maker of the records;
2. Records created and maintained by a school or school district's law enforcement unit for a law enforcement purpose;
3. Employment records of students which relate exclusively to their capacity as employees and are not available for use for any other purpose;
4. Treatment records of eligible students (see definition of eligible student in Section II. G) that are (a) made or maintained by a physician, psychiatrist,

psychologist, mental health professional, nurse, or other recognized professional or paraprofessional acting in his or her professional capacity or assisting in a paraprofessional capacity; (b) made, maintained, or used only in connection with the treatment of a student; and (c) disclosed only to individuals providing the treatment;

5. Records created or received by The School Board of Broward County, Florida (SBBC) after an individual is no longer a student in attendance and that are not directly related to the individual's attendance as a student; and
 6. Grades on peer-graded papers before they are collected and recorded by a teacher.
 7. Emails not maintained in student's permanent file.
- C. **Parent** means either or both parents of a student and includes a biological and/or adoptive parent, a guardian, foster parent, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent. This includes parents of a dependent student as defined by the Internal Revenue Code 152 of 1986. Also included: a properly appointed surrogate parent for a student with disabilities. (See Section IV, Review of Education Records, for further clarification.) Schools may presume that both parents have authority to inspect, review and obtain copies of the education records and information about a student unless the school has received evidence that there is a legally binding instrument or court order which revokes that right.
- D. **Personally identifiable information (PII)** includes, but is not limited to, a student's name, parents' or other family members' names, street address or email address of the student or student's family, telephone number, personal identifier such as a social security number or student I.D. number, biometric record, student's date of birth, place of birth, mother's maiden name, photographs, a list of personal characteristics or other information that would make the student's identity traceable, and information requested by a person who the school or District reasonably believes knows the identity of the student to whom the education record relates.
- E. **School official** is a person employed by the district as an administrator, supervisor, instructor, or support staff member (including health and medical staff and law enforcement unit personnel); a person serving on the School Board; a person or company with whom the district has contracted to perform a special task that would normally be performed by SBBC personnel (such as an attorney, auditor, medical consultant or therapist); a clerical or paraprofessional staff member assisting another school official in performing his or her professional tasks. **CAUTION:** Volunteers (including parents assisting at the school) and students assisting teachers and other staff are not "school officials" and are not permitted to have access to other students' personally identifiable information.
- F. **Legitimate educational interest** means a school official's need to review an education record in order to fulfill his or her professional responsibility.

- G. **An eligible student** is a student who has reached 18 years of age or is attending an institution of postsecondary education. Eligible students also include married students, emancipated minors or students who have a child regardless of whether or not the student has turned 18 years of age (Chapter 743, F.S.). For students eligible under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. §1400 *et.al.*, refer to School Board Policy 6000.4.
- H. **Directory information** is personally identifiable information that would not generally be considered harmful or an invasion of privacy if disclosed. FERPA allows nonconsensual disclosure of designated directory information if the parent or eligible student does not opt out of the disclosure of directory information. The types of information SBBC designates as “directory information” – as well as the recipients and purposes of the disclosure – are listed in the FERPA Notice found in Policy 5.8, Code of Student Conduct.
- I. **De-identification** means the removal (redaction) of all personally identifiable information from a student's record. The educational institution or other party shall make a reasonable determination that a student's identity is not personally identifiable, whether through single or multiple releases, and taking into account other reasonably available information.
- J. **Maintain** means filing, storing, or retaining student records in the student's permanent cumulative record or in the locations designated pursuant to Rule 6A-1.0955(7)(e), F.A.C.
- K. **Informal hearing** means a meeting scheduled by a designated school official (or designee) during which the student and/or parent has an opportunity to voice his or her concerns and facts, and present evidence in support thereof, prior to the school official making a determination on the issue.

III. **Annual Notification Of Rights**

- A. The Code of Student Conduct provides the annual notifications to parents and eligible students of their privacy rights, which include the following notices:
1. FERPA Notice;
 2. Protection of Pupil Rights Amendment (PPRA) Notice
 3. Health Insurance Portability and Accountability Act (HIPAA Notice); and
 4. Collection, Use and Disclosure of Social Security Numbers of Students.
- B. The Code Book for Student Conduct, including each privacy notice, is available in English, Haitian-Creole, Portuguese, and Spanish at <https://www.browardschools.com/Page/38107>. For notices in other languages, an alternative method of notice will be provided.

IV. Review Of Education Records

- A. The principal is responsible for **informing employees of confidentiality requirements** on an annual basis. This may be accomplished by reviewing the FERPA Notice in the Code Book for Student Conduct.
- B. Parents or eligible students must notify the school in writing of their request to review education records. Parents/eligible students shall complete and sign the *Parental Request to Access Student Records* form, available at browardschools.com/privacyinformation. This form shall be filed at each school or District location maintaining the requested record for review. Parents who wish to have their child's records reviewed by another person of their choosing must notify the school of the specific request in writing.
- C. The school must **comply with the request** from a parent or eligible student to review records **within a reasonable period of time not to exceed 30 calendar days** in accordance with Rule 6A-1.0955(7)(b), F.A.C.
- D. The school **may not destroy records if a request for access is pending**, even if the school has been notified by the Records Retention Department that the records can be destroyed pursuant to the Florida retention schedules.
- E. If the **records contain information on more than one student**, the parent may inspect, review or be informed of only the specific information about his or her child, unless the records are de-identified in compliance with FERPA.
- F. When a **parent reviews a record, he/she must be accompanied by an official of the school** who shall be responsible for ascertaining that the student record or file is not altered in any way and that nothing is added to nor taken from the file at the time of the review.
- G. Parents must be given access to student records pertaining to their child. Schools **may charge parents a fee for copies** of education records at the rate of 15 cents for a one-sided document or 20 cents for a two-sided document. Schools are required to give parents copies of records, without charge, only if failure to do so would effectively deny access to the parent to inspect and review (e.g., parent is physically or geographically unable to come to the school to review records).
- H. A **non-custodial parent** has the same rights to access information and review records as a custodial parent unless there is a court order or legally binding document that specifically revokes these rights.
- I. **A stepparent who is present in the home on a day-to-day basis** and meets the definition of "parent" (in Section II.C) has the same rights as a biological and/or adoptive parent. Conversely, a stepparent who is not present on a day-to-day basis in the home of the child has no right to access the child's records.
- J. When a student becomes an **eligible student** (see definition in Section II.G), the rights accorded to, and consent required of, parents transfer from the parents to the student. The prior consent of the eligible student would be required to disclose the records. However, prior consent by the eligible student is not required for schools to disclose information from the education record to the parents if the eligible student is a dependent student as defined in section 152 of the Internal Revenue Code of 1986. (In general, "dependent" means a son or daughter or a stepson or stepdaughter for whom the parent provides over half of the child's support for the calendar year.) The school may presume an eligible student is dependent under the Internal Revenue

Code of 1986 unless the school has been provided documentation that the student is not a “dependent student.”

- K. Pursuant to Rule 6A-1.0955(7)(e), F.A.C., a listing of the types and locations of education records SBBC maintains and the titles and addresses of the officials responsible for those records (*Education Records – Types & Locations*) is available at browardschools.com/privacyinformation.

V. Amending Education Records

- A. Each school principal shall ensure the information maintained as part of a student’s record is accurate (Rule 6A-1.0955(7)(l), F.A.C.). The procedures for amending a student’s education records are:
1. The parent or eligible student must identify, in writing to the principal the portion of the record believed to be inaccurate, misleading, or a violation of the privacy rights of the student;
 2. The principal must decide within a reasonable period of time whether or not to amend the record as requested (principals need to confer with appropriate District officials prior to amending any records that may be required for audit and/or ESE documentation). **NOTE:** Substantive decision-making processes, which include but are not limited to Behavioral Threat Assessments and student discipline, are not subject to the amendment process;
 3. If the principal decides to amend the record, the principal must make certain that the agreed upon changes are made to copies of the student’s record that may be held outside of the cumulative file (e.g., Psychological Services file);
 4. If the principal decides not to amend, the principal must inform the parents in writing of the decision and their right to an informal hearing;
 5. If an informal hearing is held, it shall include the following:
 - a. The informal hearing shall be held within a reasonable period of time after the school has received the request, and the parent of the student or the eligible student shall be given notice of the date, place and time reasonably in advance of the informal hearing.
 - b. The informal hearing shall be conducted, and the decision rendered by the designated school official or other impartial third party (who did not participate in the decision at issue and does not have any direct interest in the outcome). Staff members who have knowledge of the events or records shall be available at the hearing.
 - c. The parent of the student or the eligible student shall be afforded a full and fair opportunity to present evidence relevant to the issues raised and may be assisted or represented by individuals of his or her choice at his or her own expense, including an attorney.
 - d. The decision shall be rendered in writing within a reasonable period of time after the conclusion of the informal hearing.
 - e. The decision shall be based solely upon the evidence presented at the informal hearing and shall include a written summary of the evidence and the reasons for the decision.

6. If the informal hearing decision is not to amend the records, the parents or eligible student have a right to submit a statement of disagreement in the record. The parent's original request to amend the record and any statements submitted will be placed in the student's file. This statement must be maintained with the contested part of the record and disclosed whenever the corresponding part of the student record is released.
7. If, as a result of the informal hearing, it is determined that the record is inaccurate, misleading or a violation of the privacy rights of the student, the school will amend the record and inform the parent or eligible student in writing of the amendment.

VI. Disclosure Of Education Records

- A. Conditions for Prior Consent:** Except as provided below, a parent or eligible student shall provide a signed and dated written consent before a school may disclose education records to third parties. The consent must:
1. Specify the records that may be disclosed;
 2. State the purpose of the disclosure; and
 3. Identify the party or class of parties to whom the disclosure may be made.
 4. Parents and eligible students shall utilize the *Authorization for Release and/or Request for Information* form, available at browardschools.com/privacyinformation.
- B. Exceptions (when prior consent is not required):** Pursuant to FERPA, certain student identifiable information may be disclosed without the prior consent of the parent/eligible student under limited conditions, as follows:
1. Disclosure to **school officials** (see definition in Section II.E) who have been determined to have legitimate educational interests, including contractors, consultants, and others who perform functions or services that would otherwise be provided by District employees, who are under direct control of the district, and who are prohibited from redisclosing the personally identifiable information from education records. The District is required to use reasonable efforts – such as the use of passwords – to ensure that school officials access only those records in which they have legitimate educational interests. (34 CFR §99.31(a)(1))
 2. Certain authorized disclosures to school officials of other institutions for purposes of student transfer or student enrollment. (34 CFR §99.31(a)(2) and §99.34)
 3. Certain disclosures to authorized federal, state and local officials, including educational authorities, and for audits or evaluations of federal and state supported programs. (34 CFR §99.31(a)(3) and §99.35, includes **written agreement** requirements)

4. Certain authorized disclosures in connection with financial aid, defined as payment of funds conditioned on the student's attendance at an educational institution, in compliance with 34 CFR §99.31(a)(4).
5. Disclosures to State and local officials and authorities who are parties to an interagency agreement in compliance with Chapter 985, Florida Statutes, concerning sharing information with the Juvenile Justice System, in compliance with 34 CFR §99.31(a)(5) and §99.38.
6. Certain authorized disclosures to organizations conducting studies for or on behalf of SBBC. (34 CFR §99.31(a)(6), includes **written agreement** requirements)
7. Disclosures to accrediting organizations to carry out accrediting functions. (34 CFR §99.31(a)(7))
8. Disclosures to parents of a dependent student (Internal Revenue Code, section 152). Schools may presume that a parent of the student has authority to inspect and review education records of a student unless the school has been provided documentation that the student is not a "dependent student." (34 CFR §99.31(a)(8))
9. Disclosures to comply with judicial orders or lawfully issued subpoenas if certain specific requirements set forth in 34 CFR §§99.31(a)(9)(i)&(ii) are met. Parents and eligible students must be given advance notice of SBBC's intent to comply with the order or subpoena in 10 days, so the parent or eligible student may seek protective action. (A template, *Notice of Intent to Comply with Subpoena/Court Order*, is available at <https://www.browardschools.com/Page/36133>.) If the parent files an objection with the court or tribunal within 10 days of mailing of the notice of intent to comply, the student records shall not be produced pending resolution of the objections by the court or tribunal. However, no notice is required if the parent is a party to a child abuse, neglect, or dependency proceeding and the order is issued in that proceeding (for example, a court order appointing a guardian ad litem) (20 U.S.C. §1232g(b)(2)). Likewise, no notice is required if the subpoena or court order is confidential and prohibits disclosure to parents or eligible students of the existence of and the response to the subpoena.
10. Disclosures made in legal proceedings (court or administrative) where the school district is a party, and the disclosures are made in compliance with 34 CFR §99.31(a)(9)(iii)(A and B).
11. Specified disclosures in connection with an articulable and significant threat to the health or safety of students or others if the disclosure is necessary to protect the health or safety of the student or other individuals, in compliance with 34 CFR §99.31(a)(10) and §99.36.
12. Disclosures of information designated as "directory information" in compliance with 34 CFR §99.31(a)(11) and §99.37.

13. Disclosures are to the eligible student or to the parents of minor students. (34 CFR §99.31(a)(12))
14. Disclosures of redacted information (after removal of all personally identifiable information) provided that the identity cannot be ascertained from other “reasonably available information” (34 CFR §99.31(b)(1). See definition of **de-identification** in Section II.I.)
15. Disclosures of redacted student identifiable information for purposes of educational research when the requirements set forth at 34 CFR §99.31(b)(2) are met.
16. Disclosures are to an agency caseworker or representative of a state or local child welfare agency, or tribal organization, when the agency is legally responsible for the care and protection of the student, pursuant to the Uninterrupted Scholars Act (20 U.S.C. §1232g(b)(1)(L)).
17. Disclosures are to the Secretary of Agriculture or authorized representative from the Food and Nutrition Service or contractors acting on behalf of the Food and Nutrition Service for the purposes of conducting program monitoring, evaluations, and performance measurements of State and local educational agencies receiving funding or providing benefits under the Richard B. Russel National School Lunch Act or the Child Nutrition Act. (20 U.S.C. §1232g(b)(1)(K))
18. Disclosures of education records between a high school and local college or postsecondary institution when a student is simultaneously enrolled in both (dual enrollment). (studentprivacy.ed.gov, FAQ section)

VII. Recordkeeping Requirements Related To Requests And Disclosures

- A. Access log requirement:** A school must maintain a record of each request for access to, and each disclosure of, personally identifiable information from an education record. The log:
1. Must be maintained as long as the record is maintained;
 2. Must include the individuals who have requested information from the record;
 3. Must include individuals who have received information from the record; and
 4. Must include the legitimate interest individuals had in receiving the information.

The *FERPA Disclosure Log* is available at:
browardschools.com/privacyinformation.

- B. Exceptions to access log requirement:** This access log requirement does not apply if the request was from, or the disclosure was made to:
1. A parent or eligible student,
 2. A school official with a legitimate educational interest,

3. A party who has written consent from the parent or eligible student,
4. A party seeking directory information, and
5. An individual with a lawfully issued subpoena or court order prohibiting disclosure to parents or eligible students of the existence of and the response to the subpoena.

VIII. Redisclosure of Information and Penalty

A. Requirement to notify receiving parties: When disclosing information from public school education records in accordance with FERPA, the school must inform the receiving party in writing that the information may not be further disclosed, and the receiving party may use the information only for the purposes for which the disclosure was made. **Exceptions** to the requirement to notify the receiving agency of redisclosure prohibitions include when the:

1. Disclosure is to the parent, eligible student or parents of “dependent students” as defined by the Internal Revenue Code 152 of 1986;
2. Receiving parties or individuals disclose information on behalf of the school district and meets the criteria for disclosure without prior consent and has appropriately recorded the disclosure;
3. Disclosure is in response to a court order or lawfully issued subpoena.

B. Penalty for improper redisclosure: Pursuant to 34 CFR 99.67(c), if the Student Privacy Policy Office (SPPO) determines that a third party outside of SBBC improperly redisclosed personally identifiable information from education records in violation of 34 CFR §99.33, SBBC may not allow that third party to access personally identifiable information from education records for at least five years.

IX. Safeguarding Education Records

A. Responsibility

The school principal or designee shall be responsible for protecting the privacy and security of all student records maintained in the school. When student records are maintained at non-school locations (i.e., psychological services, records retention, etc.), the Director or designee of each non-school location shall be responsible for the privacy and security of those student records. Records shall be stored and accessed in a manner to prevent unauthorized or unintentional access.

B. Electronic records

1. All District employees are required to adhere to Policy 5306 (School and District Technology Usage) and to Information Security Guidelines.
2. Physical security: adequate building security must be provided for the protection of all physical and logical BCPS computer assets and especially sensitive applications and data.
3. System security: Data must be protected by defining specific users or groups to specific system resources. All requests for access by outside

agencies or entities must be approved by the Office of the General Counsel, Privacy Officer, or Director of IT Security.

C. Paper records

Hard copies of student records (i.e., the CUM folder) shall be stored in a secure area where access is limited to authorized personnel (Principal, Guidance Director, Registrar, Administrator or Designee).

X. Enforcement

Parents and eligible students have the right to file a complaint with the Student Privacy Policy Office (SPPO), U.S. Department of Education, 400 Maryland Avenue, S.W., Washington, DC 20202, concerning alleged failures by the school district to comply with the requirements of the Family Educational Rights and Privacy Act. Parents and eligible students may also contact SBBC's Privacy Officer at (754) 321-1914 to discuss any concerns.

Policy Custodian: Risk Management

Former Policy Number: 5100.1

Authority: F.S. 1001.41; 1001.42

Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 CFR Part 99 et. seq.

Internal Revenue Code, 26 U.S.C. §152(c)(1)

Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. §1232h; 34 CFR Part 98

Uninterrupted Scholars Act (USA), 20 U.S.C. §1232g(b)(L)

Richard B. Russell National School Lunch Act, 20 U.S.C. §1232g(b)(1)(K)

F.S. §§490; 491; 743; 985, 1000.21 (5); 1002.22; 1002.221

F.A.C. Rule 6A-1.0955

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