

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

**JEFFREY S. MOQUIN
CHIEF OF STAFF**

Signatures on File

August 2, 2017

TO: All School Board Employees

FROM: Aston A. Henry, Jr., Director
Risk Management Department

VIA: Jeffrey S. Moquin
Chief of Staff

SUBJECT: **PRIVACY RIGHTS OF STUDENTS**

The District is committed to protecting the privacy rights of all students in accordance with federal law, state law, and School Board policy. Student records (also known as education records) are official and confidential documents protected by the Family Educational Rights and Privacy Act (FERPA). All staff members are required to follow the guidelines of Policy 5100.1, *Student Records: Confidentiality and Family Educational Rights*, which is available at <http://www.broward.k12.fl.us/sbbcpolicies/docs/Policy%205100.1.pdf>.

The District's Privacy Information website at <http://www.browardschools.com/privacyinformation> contains privacy notices and related forms to ensure all staff are aware of and respect students' privacy rights. In addition, this site also features detailed FAQs and fact sheets (please see attached) with guiding principles and scenarios for specific privacy issues that may arise at schools or locations. These include:

- **UPDATED: *Communicable Diseases and Disclosures of Student Information to County Health Officials***

During times of a potential or confirmed spread of a communicable disease, schools may receive requests from Broward County Department of Health for student personally identifiable information. This fact sheet covers the District's procedures to collaborate with health officials to ensure the safety of students and comply with privacy laws.

<http://www.browardschools.com/SiteMedia/Docs/Policies/disclosures-to-health-officials-disease-spread-1-30-17.pdf>

- **UPDATED: *Disclosure of Student Information to Law Enforcement***

This FAQ includes a variety of scenarios pertaining to sharing student information with external law enforcement agencies.

<http://www.browardschools.com/SiteMedia/Docs/Policies/FAQ-disclosures-to-law-enforcement-062017.pdf>

PRIVACY RIGHTS OF STUDENTS

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- **NEW: *Dual Relationships & Student Privacy Rights***

A dual relationship (as relevant to the disclosure of student information) means an employee functions in two roles: (1) District employee, and (2) an additional role not directly related to the job. This fact sheet contains several examples and solutions to help employees separate out the two roles and ensure their disclosures of student information are in compliance with FERPA. <http://www.browardschools.com/SiteMedia/Docs/Info/pdf/Dual-Relationships-Privacy-8-1-17.pdf>

If you have questions or would like additional information on privacy practices, contact Todd Sussman, Privacy Officer, Risk Management at 754-321-1914. Please post this memorandum in high traffic areas and on bulletin boards at your school or location for staff members who do not have online access.

JMS/AAH:tc
Attachments

cc. School Board Members
Senior Leadership Team
Nordia Sappleton, Curriculum Supervisor, Diversity, Prevention & Intervention
Todd Sussman, Privacy Officer, Risk Management Department

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

5100.1

5100.1

STUDENT RECORDS: CONFIDENTIALITY AND FAMILY EDUCATIONAL RIGHTS

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I. INTRODUCTION

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). 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. BELOW).

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 EIGHTEEN YEARS OLD. FOR STUDENTS AGE 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 COMPLIED WITH AS SET FORTH IN POLICY 6000.4, EXCEPTIONAL STUDENT EDUCATION POLICIES & PROCEDURES.

THE PRIMARY RIGHTS UNDER FERPA ARE:

- A. THE RIGHT TO INSPECT AND REVIEW EDUCATION RECORDS
- B. THE RIGHT TO SEEK TO AMEND EDUCATION RECORDS THAT ARE INACCURATE, MISLEADING, OR IN VIOLATION OF THE STUDENT'S PRIVACY RIGHTS
- C. THE RIGHT TO HAVE LIMITED CONTROL OVER THE DISCLOSURE OF INFORMATION FROM EDUCATION RECORDS

OTHER BOARD POLICIES ADDRESS STUDENT INFORMATION. POLICY 5100.2, STUDENT RECORDS: TRANSFER, RETENTION AND DISPOSAL, DEFINES THE

PROCESS FOR TRANSFERRING, RETAINING AND DISPOSING OF EDUCATION RECORDS.

POLICY 4019, PROTECTED HEALTH INFORMATION, ADDRESSES INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION COVERED BY THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

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.C. BELOW).

EDUCATION RECORDS ARE CONFIDENTIAL AND EXEMPT FROM THE FLORIDA PUBLIC RECORDS ACT (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; 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 below) 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 Service 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 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 (I.D.E.A.), 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 for 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(6)(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, facts and present evidence in support thereof, prior to the school official making a determination on the issue.

III. ANNUAL NOTIFICATION OF RIGHTS

The Code of Student Conduct provides the annual notifications to parents and eligible students of their privacy rights, which include the following notices:

- A. FERPA Notice;
- B. Protection of Pupil Rights Amendment (PPRA) Notice (separate procedures for this notice are available at browardschools.com/privacyinformation);
- C. Health Insurance Portability and Accountability Act (HIPAA Notice); and
- D. Collection, Use and Disclosure of Social Security Numbers of Students.

The Code of Student Conduct, including each privacy notice, is available in English, Haitian-Creole, Portuguese and Spanish at browardschools.com/privacyinformation. 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 of Student Conduct.
- B. A parent or eligible student 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/privacy information](http://browardschools.com/privacy-information). 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(6)(b), FAC.
- 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(6)(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

Each school principal shall ensure the information maintained as part of a student's record is accurate (Rule 6A-1.0955(6)(l), F.A.C.). The procedures for amending a student's education records are:

- A. 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;
- B. 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);
- C. 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);
- D. 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;
- E. If an informal hearing is held, it shall include the following:
 1. 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.
 2. 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.
 3. 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.
 4. The decision shall be rendered in writing within a reasonable period of time after the conclusion of the informal hearing.
 5. 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.

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.

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.

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. Those conditions are listed at 34 C.F.R. section 99.31(a), which are summarized below.
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.
 2. Certain authorized disclosures to school officials of other institutions for purposes of student transfer or student enrollment (subject to the requirements of FERPA 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 (subject to requirements of FERPA 99.35 and written agreements).
 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 FERPA 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 FERPA 99.38.

6. Certain authorized disclosures to organizations conducting studies for or on behalf of SBBC (subject to specific requirements set forth in FERPA 99.31(a)(6) and written agreements).
7. Disclosures to accrediting organizations to carry out accrediting functions.
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.”
9. Disclosures to comply with judicial orders or lawfully issued subpoenas if certain specific requirements set forth in FERPA 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 browardschools.com/privacyinformation.) 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. 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 FERPA 99.36.
11. Disclosures of information designated as “directory information” in compliance with FERPA 99.37.
12. Disclosures are to the eligible student or to the parents of minor students (FERPA 99.31(a)(12)).
13. Disclosures made in legal proceedings (court or administrative) where the school district is a party and the disclosures are made in compliance with FERPA 99.31(a)(9)(iii)(A and B).
14. Disclosures of redacted information (after removal of all personally identifiable information) provided that the identity cannot be ascertained from other “reasonably available information” (FERPA 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 FERPA 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 (20 USC 1232g(b)(1)).

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 FERPA 99.67(c), if the Family Policy Compliance Office (FPCO) determines that a third party outside of SBBC improperly redisclosed personally identifiable information from education records in violation of FERPA 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

All District employees are required to adhere to Policy 5306 (School and District Technology Usage) and to Information Security Guidelines.

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.

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 and Privacy Officer.

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 Family Policy Compliance Office, 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.

STATUTORY AUTHORITY: F.S. 1001.41 & 1001.42

LAWS IMPLEMENTED: Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g
34 CFR Part 99 et. seq.
Protection of Pupil Rights Amendment (PPRA), 20 U.S.C. § 1232h;
34 CFR Part 98
Chapters 490; 491; 743; 1000.21 (5); 1002.22; and 1002.221, Florida Statutes
6A-1.0955(6)(b)(e), Florida Administrative Code.

POLICY ADOPTED: 11/13/69

POLICY READOPTED: 9/5/74

POLICY AMENDED: 4/21/77; 10/5/78; 3/14/89; 8/20/96; 1/12/99, 4/20/04, 9/1/15



Communicable Diseases and Disclosures of Student Information To County Health Officials

Purpose

During times of a potential or confirmed spread of a communicable disease, schools may receive requests from health officials from the county health department for student personally identifiable information (PII). Broward County Public Schools (BCPS) will collaborate with the Florida Department of Health in Broward County (DOH) to ensure the safety of all of our students. The School District is also required by law to respect each student's privacy rights and to disclose student information only in compliance with state and federal laws. This fact sheet covers the District's procedures for disclosing student information to county health officials.

Guiding Principles

1. Health officials need selected information pertaining to students to effectively address the outbreak of a communicable disease.
2. Students and parents have privacy rights under several laws, including but not limited to:
 - Family Educational Rights and Privacy Act (FERPA) (42 USC 1232g, FERPA, 34 C.F.R Section 99.30)
 - Under FERPA, 34 CFR 99.36, the District may disclose student PII without consent after determining "there is an articulable threat to the health and safety of a student or other individuals."
 - Florida Statutes 1002.22, 1002.221, and 1002.222.
3. In accordance with FERPA, students' PII is confidential and may only be disclosed to health officials as follows:
 - With written consent of the parent or student age 18 or over.
 - Without written consent in connection with a FERPA-defined health or safety emergency, as long as the disclosure is limited to the information necessary to address the public health threat. In this context "emergency" means a contagious illness that has "public health significance."
4. Pursuant to Florida Statute 1003.22(9), the presence of any of the communicable diseases for which immunization is required by the Department of Health in a Florida public school shall permit the county health department or State Health Officer to declare a communicable disease emergency.

STEPS FOR WHEN THE SCHOOL PRINCIPAL SUSPECTS A DISEASE OUTBREAK

1. Principal notices symptoms, increase in absences, report of diseases, etc.
2. Principal contacts Coordinated Student Health Services (754-321-1575) and Risk Management (754-321-1900).
3. In a collaborative effort, Coordinated Student Health Services contacts DOH to ascertain the student PII needed to address the situation.
4. Coordinated Student Health Services notifies the school as to information to be released to DOH.
5. School discloses the information directly to DOH.
6. For information disclosed under the FERPA exception to consent, school notates the information released on the FERPA Disclosure Log (for each student) – or form letter (with date of request, date of disclosure, type of information requested, purpose of disclosure, and person making the disclosure). The FERPA Disclosure Log may be found on the District’s Privacy Information website at:

<http://www.broward.k12.fl.us/ets/css/retrec/recordsret/pdfs/FERPADISCLOSURELOG.pdf>

7. Director of Coordinated Student Health Services maintains record of location(s) impacted and rational basis for the disclosure.

STEPS IF DOH SUSPECTS A DISEASE OUTBREAK:

1. DOH contacts Director of Coordinated Student Health Services (754-321-1575) and informs Director of situation and student PII they will need.
2. Coordinated Student Health Services notifies the school as to information to be released to DOH.
3. School discloses the information directly to DOH.
4. For information disclosed under the FERPA exception to consent, school notates the information released on FERPA Disclosure Log (for each student) – or form letter (with date of request, date of disclosure, type of information requested, purpose of disclosure, and person making the disclosure). The FERPA Disclosure Log may be found on the District’s Privacy Information website at:

<http://www.broward.k12.fl.us/ets/css/retrec/recordsret/pdfs/FERPADISCLOSURELOG.pdf>

5. Director of Coordinated Student Health Services maintains record of location(s) impacted and rational basis for the disclosure.

PRIOR TO A HEALTH OR SAFETY EMERGENCY

At times when there is a potential but not confirmed (by DOH) **health or safety emergency**, the school may disclose student information to county health officials as follows: If the parent or student age 18 or over has signed the Release of Medical Information section of the *Student*

Emergency Contact Card (SECC), the school may disclose the types of information listed in the consent statement from the SECC:

“I hereby authorize for my child’s medical information, parental contact information, and other health information (collected from health services provided at school, including information stored electronically) to be shared with emergency personnel and health department officials to address conditions of public health importance, including information to meet and to prepare for potential or confirmed health conditions.”

The SECC may be found on the official forms website at this link:

<http://www.broward.k12.fl.us/ets/css/secret/recordsret/pdfs/StudentEmergencyCard4172.pdf>

1. If the county health department is requesting “directory information” only (including: student name, parent name, residential address, telephone number, date of birth and/or school grade level), the school may disclose the information as long as the parent or student age 18 or over did not “opt out” of the disclosure on the completed *FERPA Opt-Out Notification Form*. This form specifies the Board-approved purpose of the disclosure as follows:

“...to Broward County health officials for purposes of communicating with parents to address conditions of public health importance as determined by the Florida Department of Health (64D-3, F.A.C.), including information to meet or to prepare for a potential or confirmed health threat...”

The *FERPA Opt-Out Notification Form* may be found in the Code of Student Conduct (p. xiii) at the following link:

<http://asp-us.secure-zone.net/v2/index.jsp?id=115/186/1039&lng=en>

**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 . . .” (s.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 5100.1, *Student Records: Confidentiality and Family Education Rights*.
4. The Florida education code requires school principals to disclose student PII “only as provided in chapter 1002” Fla. Stat. (s. 1003.25 (1), Fla. Stat.). Sections 1002.22, 1002.221 and 1002.222 provide that student records and information 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 U.S.C .s. 1232g) and its implementing regulations (34 CFR Part 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 PII (including characteristics that may identify a student in the school community) is removed from a student record, then FERPA does not apply to the de-identified (redacted) record (De-identified records - 34 C.F.R. 99.31(b)).

FAQ ON DISCLOSURE OF STUDENT INFORMATION TO LAW ENFORCEMENT

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 U.S.C. 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.” (s.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 5100.1, *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 Requel Bell in the Risk Management Department.
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 C.F.R. § 99.67).

FAQ ON DISCLOSURE OF STUDENT INFORMATION TO LAW ENFORCEMENT

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 of Student Conduct (with FERPA Opt Out Notification form is available at www.browardschools.com/privacyinformation).

FAQ ON DISCLOSURE OF STUDENT INFORMATION TO LAW ENFORCEMENT

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/FAB125CDDFB3FB285256586006B7F1>.

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 Service Quality Office, that an "emergency" exists that meets the FERPA requirements. For child abuse situations, please see Question No. 6 below, and for disclosures by law enforcement, see Question No. 12 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 C.F.R. 99.31(a)(9)).

FAQ ON DISCLOSURE OF STUDENT INFORMATION TO LAW ENFORCEMENT

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?

Answers:

- 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. The policy and the release form are available at <http://www.broward.k12.fl.us/sbbcpolicies/> and also attached (please see **Attachment 1**).

FAQ ON DISCLOSURE OF STUDENT INFORMATION TO LAW ENFORCEMENT

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.

FAQ ON DISCLOSURE OF STUDENT INFORMATION TO LAW ENFORCEMENT

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," E.3) provide:

FAQ ON DISCLOSURE OF STUDENT INFORMATION TO LAW ENFORCEMENT

- 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.** [CALEA 44.2.2 a]
- 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, available at SBBC official forms at www.browardschools.com/privacyinformation and also attached (please see **Attachment 2**).

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.

FAQ ON DISCLOSURE OF STUDENT INFORMATION TO LAW ENFORCEMENT

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.

Original version: 8-25-14

Updated 9-15-15 and 6-20-17

TAKING A DEPENDENT CHILD INTO CUSTODY

A CHILD, ALLEGED TO BE DEPENDENT, MAY BE TAKEN INTO CUSTODY PURSUANT TO CHAPTER 39.401 OF FLORIDA STATUTES AND THE RULES OF THIS POLICY BY AN AUTHORIZED AGENT OF THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES OR BY A LAW ENFORCEMENT OFFICER, IF THE OFFICER OR AGENT HAS REASONABLE GROUNDS TO BELIEVE THAT THE CHLD HAS BEEN ABANDONED, ABUSED, OR NEGLECTED, IS SUFFERING FROM ILLNESS OR INJURY, OR IS IN AN IMMEDIATE DANGER FROM HIS/HER SURROUNDINGS AND THAT HIS/HER REMOVAL IS NECESSARY TO PROTECT THE CHILD.

AUTHORITY: F.S. 230.22 (1) (2)
 Approved as Emergency Rule #ER82-1: 3/18/82
 Policy Adopted: 4/15/82

Policy Amended: 5/2/00

RULES

1. If any authorized agent of the Florida Department of Children and Families or law enforcement appears on campus with a court order stating that they have the authority to take a particular child into custody, the court order should be a certified copy which should have an impression seal imprinted on the document with a statement by the Clerk of the Court certifying it to be a certified copy of the original. That document or a photocopy thereof should be placed in the student folder upon taking of the child into custody.
2. However, before any authorized agent of the Department of Children and Families or any law enforcement agency attempts to take a child into custody from a school, as authorized under Chapter 39.401 of the Florida Statutes, he/she will contact the School Board's Special Investigative Unit (S.I.U.). An S.I.U. investigator will be dispatched to the school to oversee the taking of the child into custody.
3. Before any dependent child is taken into custody, the S.I.U. investigator shall verify the affiliation of the person representing the agency desiring to take the child into custody.
4. Before a dependent child shall be released to an authorized agent of the Florida Department of Children and Families or a law enforcement officer without a court order, the following release form attached hereto and made a part hereof by reference, shall be executed by the agency representative and witnessed by the S.I.U. investigator, as well as a representative of the school from which the child is being taken into custody. The release form will be placed in the student folder and the incident will be recorded in the files of the Special Investigative Unit.
5. It shall be the responsibility of the governmental agency taking the dependent child into custody to make every effort to advise the parents of same.

AUTHORITY: F.S. 230.22 (1) (2)
 Approved as Emergency Rule #ER82-1: 3/18/82
 Rules Adopted: 4/15/82

Policy Amended: 5/2/00

SUPPLEMENT #23

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA
RELEASE FORM

The purpose of this release form is to provide documentation for a school's records when releasing a dependent child to the custody of an authorized agent of the Department of Children and Families or law enforcement officer pursuant to Florida Statutes 39.401 (1) (b) which states:

Taking a child alleged to be a dependent into custody

- (1) A child may be taken into custody:
- (2) By a law enforcement officer, or an authorized agent of the department, if the officer or agent has reasonable grounds to believe that the child had been abandoned, abused, or neglected, is suffering from illness or injury, or is in an immediate danger from his/her surroundings and that his/her removal is necessary to protect the child.

Prior to the time that any dependent student is authorized to be taken into custody, procedures as listed in Board Policy 1162 shall be followed.

AFFIRMATION OF AUTHORITY

I am taking _____ into
(Child's name) (Date of Birth)

protective custody pursuant to Chapter 39.401 of Florida Statutes. Upon removal of the
aforementioned child from _____ the authorized agent
of the Department of Children and Families or other law enforcement agency shall
assume full responsibility for the child and for notifying the child's parent/guardian (after
the child's removal from school).

Signature of Authorized Children & Families
Agent or Law Enforcement Officer

Date & Time of Day

Witnessed by:

Signature of School Official

Signature of Special Investigative Unit Investigator

FERPA DISCLOSURE LOG

Student Name: _____ SID Number: _____ Date of Birth: _____ Parent/guardian Name: _____	School : _____ _____ _____ <input type="checkbox"/> Elem. <input type="checkbox"/> Middle <input type="checkbox"/> High <input type="checkbox"/> Centers
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Pursuant to the Family Educational Rights & Privacy Act (FERPA), 34 CFR 99.32 (a)(1), a school must maintain a record of each request for access to and each disclosure of personally identifiable information from the education records of each student, with some exceptions (99.32(d)). See footnote*.

Date of Request	Requested By	Information Requested	Reason (Legitimate Interest)	Disclosed By	Date of Disclosure

*Exceptions: A log is not needed for disclosures to (a) the parent or eligible student, (b) a school official with a legitimate educational interest, (c) a party who has written consent from the parent or eligible student, (d) a party seeking directory information, and (e) a party seeking or receiving information under a subpoena where the issuing authority has ordered nondisclosure.

Form #4341

Revised 06/11

FACT SHEET:

DUAL RELATIONSHIPS & STUDENT PRIVACY RIGHTS

Developed by:

Todd Sussman, LMHC, LMFT, Privacy Officer, Risk Management
Barbara Myrick, 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 without consent in limited circumstances. 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.

FACT SHEET:

DUAL RELATIONSHIPS & STUDENT PRIVACY RIGHTS

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 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 (Principal or Designee, for example, Registrar). 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 5100.1) and the ethics of their profession.

Going back to the examples on pages 1 and 2...more to the story:

- **Scenario 1:** A student is dating his 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 issues:

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

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DUAL RELATIONSHIPS & STUDENT PRIVACY RIGHTS

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 issues:

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 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.

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.

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- **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 issues:

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

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Notification Form from the Code 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 issues:

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.

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- **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 his 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 more 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.