

2-C-7 | EDUCATION RECORDS**a. Charter Schools**

Section 1002.33(16) (b), F.S., provides that charter schools are subject to the Public Records Act and the Sunshine Law. The open government laws apply regardless of whether the charter school operates as a public or private entity. AGO 98-48. The records and meetings of a not-for-profit corporation granted charter school status are subject to the requirements of Ch. 119, F.S., and s. 286.011, F.S., even though the charter school has not yet opened its doors to students. AGO 01-23. And see AGO 2010-14 (records of team created by charter school to review personnel decisions subject to Ch. 119, F.S.).

b. Student Records

Public access to student records is limited by statute. In 2009, the Legislature amended the state statutes relating to student records to incorporate the federal Family Education Rights and Privacy Act (FERPA). Section 1002.221(1), F.S., provides that "[e]ducation records as defined in [FERPA], and the federal regulations issued pursuant thereto, are confidential and exempt" from public disclosure and may be released only as authorized in the exemption. "Education records" are defined by FERPA to mean "those records, files, documents, and other materials which contain information directly related to a student; and are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. s. 1232g(a)(4) (A). Cf. AGO 10-04 (school board meeting at which student records may be discussed may not be closed to the public in the absence of a statutory exemption from the Sunshine Law; however, "school board should be sensitive to confidential student records that may be reviewed during such a meeting and protect these records to the extent that is possible to protect the privacy of the student involved...."). Compare s. 1003.57(1)(c), F.S., providing an exemption from the Sunshine Law for hearings on exceptional student identification, evaluation, and eligibility determination; and s. 1006.07(1)(a), F.S. (student expulsion hearings exempted).

Public postsecondary educational institutions are also required to comply with FERPA with respect to the education records of students. Section 1002.225(2), F.S. Section



1006.52(1), F.S., authorizes a public postsecondary educational institution to prescribe the content and custody of records the institution maintains on its students and applicants for admission. A student's education records and applicant records are confidential and exempt. *Id.* See *Knight News, Inc. v. University of Central Florida*, 200 So. 3d 125, 128 (Fla. 5th DCA 2016) (personally identifiable information contained within records regarding alleged hazing incidents qualifies as confidential student disciplinary records; however, the names of student government officers charged with malfeasance in the performance of student government duties or alleged to have engaged in misconduct with regard to their election or appointment to their position are not confidential under FERPA because "given the statutory scheme [relating to university student government officers] student government officers know or reasonably should know" that they could be disciplined for misconduct in connection with their student government duties).

In *National Collegiate Athletic Association v. Associated Press*, 18 So. 3d 1201, 1211 (Fla. 1st DCA 2009), review denied, 37 So. 3d 848 (Fla. 2010), the court construed FERPA and the 2009 amendments to the Florida Statutes. Recognizing that under FERPA a record "qualifies as an educational record only if it 'directly' relates to a student," the court found that a transcript of an NCAA hearing and an NCAA committee response pertained to allegations of misconduct by the university athletic department, and only tangentially related to students. Therefore, since the transcript and the response had been redacted to remove student-identifying information and thus did not disclose education records, they were not exempt from disclosure. And see *Rhea v. District Board of Trustees of Santa Fe College*, 109 So. 3d 851 (Fla. 1st DCA 2013) (student's unredacted email which criticized instructor's classroom performance constituted an exempt education record). Compare *WFTV v. School Board of Seminole County, Florida*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied, 892 So. 2d 1015 (Fla. 2004), concluding that under prior student confidentiality laws (which did not incorporate FERPA), a school bus surveillance videotape was a confidential student record and could not be released to the media even with student-identifying information redacted).

In AGO 01-64 the Attorney General, in interpreting the former statutes, stated that a felony complaint/arrest affidavit



created and maintained by school police officers for a juvenile or adult who is a student in the public schools is a law enforcement record subject to disclosure, provided that exempt information such as active criminal investigative information is deleted prior to release. See now 20 U.S.C. s. 1232g(a)(4)(B)(ii) excluding "records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement" from the definition of "education records."

c. Children in Government-Sponsored Recreation Programs

Section 119.071(5)(c), F.S., exempts information that would identify or locate a child or the parent or guardian of a child, participating in a government-sponsored recreation program. A government-sponsored recreation program means "a program for which an agency assumes responsibility for a child participating in that program, including, but not limited to, after-school programs, athletic programs, nature programs, summer camps, or other recreational programs." *Id.*

d. School System Security

Please see page 157.

e. Testing Materials

Testing materials are generally exempt from the disclosure provisions of s. 119.07(1), F.S. See, e.g., s. 1008.23(1)(2), F.S. (examination and assessment instruments, including developmental materials and workpapers directly related to such instruments, which are prepared or administered pursuant to cited statutes). See AGO 09-35, concluding that student assessment tests developed by teachers to measure student preparedness for college board advanced placement exams are confidential and exempt from the inspection and copying requirements of Ch. 119, F.S. Cf. s. 1008.24(4)(b), F.S. (identity of a school or postsecondary educational institution, personal identifying information of personnel of a school district or postsecondary educational institution, or specific allegations of misconduct obtained or reported in connection with an investigation of a testing impropriety conducted by the Department of Education are confidential and exempt from disclosure until the investigation is concluded or becomes inactive).



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