

# Legally Speaking

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### Vision

100% Student Success

### Mission

Educate and prepare each student for college, career and life.

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## Politicking in the Schools

By David Koperski, School Board Attorney

As we approach the ballot-packed November 5<sup>th</sup> General Election, we want to remind everyone of the rules regarding political activities on school grounds and other district property. In short, based upon Florida law and our own School Board policies, we must remain neutral in elections and cannot act in any way that would further the campaigns of political candidates or questions on the ballot.

The general rule is that School Board property, including school sites and district technology, may not be used to promote the interests of any political candidate, organization, or position on a political question. So, no person, whether they are a candidate, employee, parent, or other person, may engage in political activities on school grounds. This includes, among other things, (1) physically campaigning on school property, (2) using school resources or time to campaign, or (3) using school logos, photos, or other property in campaign materials. These rules are based upon certain Florida statutes and the School Board Policy Manual, and violations could result in both statutory sanctions and/or employee discipline. At the end of this article, we have included an FAQ section to address some recurring scenarios.

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## Public Records - Part II

By Sara Waechter, Assistant School Board Attorney

In the last issue of *Legally Speaking*, we discussed the general rules regarding public records, including the definition of public records and our obligation to provide them. This article will continue the discussion by addressing public records requests (or “PRR” for short) in more detail and the common exemptions from the rule that we must release public records.

Most of the questions we receive regarding public records concern how we respond to PRRs. As noted, the definition of “public record” is very broad and would include records such as a student’s IEP, a teacher’s personnel file containing a social security number, and many other records held by the District. But, as you might suspect, numerous exceptions exist that preclude the District from releasing certain records and information contained in its records,



## Legal Department Mission Statement

The mission of the School Board Attorney and Staff Attorney Offices is to provide the highest quality legal services to the Pinellas County School Board, the Superintendent and the District by ensuring timely and accurate legal advice and effective representation on all legal matters.

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## Purchasing Rules & Contract Provisions - Part II

By David Koperski, School Board Attorney

In the last issue of *Legally Speaking*, we reviewed recent updates to the purchasing rules in the District, including amendments to School Board Policy 6320. That article described who has the authority to approve and sign contracts for various amounts, and discussed our technology purchasing process described here: <https://www.pcsb.org/Page/37655>. In this issue, we will outline some common contract provisions that should be in any contract that a District employee signs to buy goods or services. We also strongly recommend that any employee seeking to enter into a contract for the District or a school contact our office either by phone or by using the Request for Legal Services form (PCS Form 1-3109) here: <https://www.pcsb.org/Page/484>.

For all contracts, whether or not they go to the School Board for approval, staff reviewing them should be aware of certain provisions the contracts should contain. The District has a standard vendor contract that contains the required provisions. However, sometimes we do not use our standard contract because of the nature of the good or service we are procuring, but rather work from the vendor's contract. In those cases, we should ensure the contract addresses the following important provisions. The Legal Department has form language that can be used to address the provisions discussed below when we are not using our standard contract.

Name of the District Party. All

contracts, whether signed by the School Board or by a principal or other administrator, should be in the name of "The School Board of Pinellas County, Florida." You could add the name of your school afterwards, if you wish, such as "The School Board of Pinellas County, Florida, on behalf of Pinellas Park High School." The Board should be the party since it is the ultimate contracting authority, even when the contract does not actually go to a Board meeting for approval.

Indemnification. With very limited exceptions, contracts should not contain provisions that state the school, the District, or the School Board will indemnify, defend, or hold the other party harmless from any liability or damages. When faced with these provisions, we recommend deleting them and replacing them with a general statement that both parties agree to be responsible for their own actions, subject to monetary limitations and defenses contained in the Florida sovereign immunity statute, Section 768.28, F.S. In no event should a contract state that we will indemnify anyone else beyond the limitations of Florida sovereign immunity.

Jessica Lunsford Act. The Florida Jessica Lunsford Act requires that we perform a level 2 criminal background check on outside paid contractors if they have (1) access to school grounds when students are present, (2) direct contact with students, on or off school grounds, or (3) access to or control of school funds. If the contract contemplates these conditions, then it must contain a requirement that the

contractor will comply with the Jessica Lunsford Act and the contractors cannot begin to perform until a background check is successfully completed and a badge is issued.

Governing Law & Venue. If a contract identifies what state's laws will govern the contract, it should read "The State of Florida." Similarly, if a contract identifies what court will hear any dispute over the contract, it should read "The Circuit Court for the Sixth Judicial Circuit in Pinellas County, Florida, if a state court, or the U.S. District Court for the Middle District of Florida, Tampa Division, if a federal court."

Public Records Law. By law, all contracts with vendors who will be "acting on behalf of" the School Board, district, or any school must contain certain statutory language – this language is included in our standard contract. Further, any records held by the vendor that relate to the project must be made available to the public upon request, subject to a variety of exemptions.

E-Verify. Florida Law requires certain language regarding the federal E-Verify employment eligibility system in certain contracts.

While there are practical distinctions between contracts for \$2,000 and contracts for \$2,000,000, the legal principles of contract law apply equally to both. If there is ever any doubt as to the authority to enter into or sign a contract on behalf of the District or a school, please contact us.

***Politicking in the Schools****(Continued from page 1)*

An important exception to this general rule is that a person or group may lease school property for a fee and use it for their own purposes (within certain parameters), including campaign purposes. The fact that we lease our property does not mean that we are endorsing or sponsoring the activity conducted on it – for example, houses of worship rent our school buildings for religious services on the weekends. Questions regarding leasing a school for any purpose can be referred to the Real Estate and Facility Leasing Department at 547-7137 or the following website: <https://www.pcsb.org/Page/3995>.

Other rules must also be followed. First, employees may not spend any of their duty time or school resources (for example, copiers or the district email system) to promote a candidate or political cause. This would include active campaigning, such as passing out flyers promoting a candidate, but it also includes more passive campaigning by employees, such as wearing a shirt or button promoting a candidate. Second, other than fund-raising that occurs at an event held pursuant to a lease agreement, no employee, candidate, or other person may engage in fund-raising on School Board property.

A trend during recent campaign seasons is for candidates to request school visits. However, we can and have limited nonessential visitors for safety reasons, and that certainly applies to political candidates. However, we also need to recognize that Florida law grants certain officials the right to visit schools at any time without prior notice. While this law allows unannounced visits and allows the person to travel around the school without an escort, these visitors must still follow the same safety and sign-in procedures normally used. Any visiting candidate should be informed that they cannot engage in any political campaigning, advocacy, or literature distribution, whether active or passive during their visit. This prohibition would include: (1) wearing of shirts or buttons with their names, district or other seat/office number, or other campaign information, (2) distributing campaign literature, and (3) speaking to people, whether employees or not, to promote their candidacy. If any visiting candidate is in violation of these rules, please remind them of the rules and ask for compliance.

Please be vigilant to ensure our sites are not being used by anyone – candidate, employee, parent, or other – to promote a candidate or political position.

If you have any questions or a situation arises involving these rules on which you need guidance, please feel free to contact us at 588-6219.

**FAQs**

Based upon our experiences, the following are common campaigning fact scenarios with answers based upon Florida law and our policy, with the caveat that each specific incident should be viewed on a case-by-case basis for a final answer.

**Q1** – May a candidate, district employee, or other person park on school property with a standard sized political bumper sticker on his or her car?

**A1** – Yes. Bumper stickers are small in size and ubiquitous in our society and, thus, usually ignored. Once applied, they are difficult to remove, which would make it difficult to enforce a ban on their display.

**Q2** – May a candidate, district employee, or other person park on district property with clearly visible campaign material, other than a standard bumper sticker, attached to his or her car, such as a large car magnet or sticker?

**A2** – No. This is not allowable because this activity represents a more active engagement in political advertisement and campaigning on our property in violation of policy.

**Q3** – May a district employee wear clothing (assuming it is not in violation of dress guidelines) or a political button during duty hours saying "Vote for XYZ" or some other message reasonably calculated to advocate for a candidate or political question?

**A3** – No. This is not allowable because the employee is engaging in political advertisement and campaigning during duty hours in violation of policy. The conclusion is the same whether the employee is at a school or at a site not housing students.

**Q4** – May a candidate visit a school?

**A4** – A candidate may visit a school under the same conditions as any member of the public. This may vary among schools because school principals have the discretion to allow public visits. Of course, during any visit that is allowed, the candidate may not engage in campaigning activities, such as distributing campaign literature, talking to others about the campaign, or wearing clothing promoting their candidacy.

**Public Records - Part II**  
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such as IEPs and social security numbers. These exceptions, or “exemptions” as the law refers to them, are contained throughout Florida law and number in the hundreds. Many exemptions are specific to certain subject areas and agencies, such as certain voter registration records held by supervisors of elections or specific victim information held by the criminal justice agencies, while other exemptions are more generic, such as social security numbers and banking information.

In responding to PRRs, the District applies these exemptions to ensure legally protected information that would otherwise fit the definition of a public record is not improperly released. The most frequently used exemptions include the following:

1. Student Records. Federal and state law dictate that student records held by school districts cannot be released without parental consent, unless one of a limited number of exceptions apply. Student records are generally defined as any record made or received by the District that directly relates to the student and that the District retains.

2. Assessments for Students. All examinations and assessment instruments, including statewide and local assessments, are confidential and exempt from release as a public record. In other words, we cannot release them in response to a PRR asking for them, whether the request is for the blank test or one that a student completed – the latter would also be exempt as a student record.

3. Employee Evaluations (temporarily). Most evaluations cannot be made public until the remainder of the school year in which they were completed, plus one more full school year. For example, a teacher’s evaluation that was completed during the 2023-2024 school year cannot be released in response to a PRR until July 1, 2025.

4. Social Security Numbers. The District cannot release the SSNs of any person, including students, employees, and vendors.

5. Banking Information. The District cannot release bank account, debit card, or credit card numbers it has record of for any student, employee, or vendor.

6. Medical Information. To the extent that we have any medical information of any student or employee, we cannot release it when we respond to PRRs.

Other exemptions relate to payroll deductions, criminal history reports, active employee disciplinary investigations, and information regarding shielded employees.

When a complete record is exempt from release, such as a physician’s report of a medical condition, then it will not be released. However, exempt information is frequently contained in a record that the District is otherwise obligated to release. In these cases, we redact the exempt information, make a copy of the document, and then release it. For example, if we receive a PRR seeking a copy of an employee’s personnel file, we would first remove any entirely exempt records or pages, such as a physician’s report or a recent employee evaluation. Then, we would scan or make a copy of the remainder of the file, redact additional exempt information such as SSNs, driver license, and banking information that are only smaller portions of otherwise public pages, and then save or copy the pages we redacted. As you can imagine, this process can take a significant amount of time, especially if the PRR is for multiple employees’ personnel files or other voluminous records. If a request takes more than 15 minutes of staff time to prepare, we can charge the requester as noted above. In addition, if the requester desires copies of the non-exempt public records, we can charge 15 cents per printed page.

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***The School Board Attorney and Staff  
Attorney Offices would like to wish you  
and your families a Safe and Happy  
Holiday Season!***