

Legally Speaking

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100% Student Success

Mission

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Politics and the Schools

By David Koperski, School Board Attorney

Once again, the calendar reads with an even-numbered year, which means we will begin seeing more and more campaign materials, culminating in our civic duty to cast votes for local, state, and national candidates in the August 28th primary and November 6th general elections. This article serves to remind us all of the rules regarding political activities on school grounds and on other district property. Essentially, 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. This principle applies to the district generally and each of us as employees while at work. As these issues can sometimes be thorny to navigate, we always encourage site administrators facing these issues to contact our office at 588-6220 for additional guidance.

Our guiding general rule is that School Board property, including school sites, may not be used



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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Court Upholds School District's Denial of Parents' Request for Disabled Student to Carry Recording Device to School

By Laurie Dart, Staff Attorney

The parents of a disabled student sued a school district in Maine alleging, among other things, that the school violated the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act when it refused to permit their son, who was diagnosed with autism and a language disorder, to wear an audio recording device throughout the school day. The procedural twists and turns in this case illustrate the complexity of sorting out the differences and overlap between the purely anti-discrimination laws (ADA and Section 504) and the Individuals with Disabilities Education Act (IDEA).

The Court described the relationship between the parents and the school as tense, noting that the parties had "battered heads" numerous times over the

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to promote the interests of, among other things, any political candidate, organization, or position on a political question. Thus, 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. See School Board Policy 9700.01, which can be accessed in our School Board Policy Manual on our website under the "About Us" tab on our homepage, www.pcsb.org.

An important, and often misunderstood, 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 leasing of our property does not mean that we are endorsing or sponsoring the activity conducted on it—for example, houses of worship sometimes rent our school buildings for religious services on the weekends, which we obviously cannot endorse. Rather, we are simply of-

fering our sites for community use and are able to raise a little revenue in the meantime. The leasing policy, School Board Policy 7511, contains additional rules that must be followed. Questions regarding leasing a school for any purpose should be referred to the Real Estate Department at 547-7137 or the following website:
[HTTP://www.pcsb.org/Page/3995](http://www.pcsb.org/Page/3995).

Other rules must also be followed. First, employees may not spend any of their duty time or school resources (e.g., copiers) to promote a candidate or political cause. Not only does a specific Florida statute prohibit a candidate from doing this, but our School Board policies also prohibit it and violations would likely lead to employee discipline. 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. The Florida Secretary of State's office has made clear that this prohibition extends not only to the physical grounds of the schools, but also to solicitations, including invitations to fund-raisers, made by phone, e-mail, regular mail, and fax to schools. Thus, if your school receives faxes, , emails, or mailers with campaign materials,

you should dispose of them and not share them with anyone. Otherwise, even unsolicited campaign materials could be viewed as being endorsed by the school if the school disperses them. If you continue to receive the same materials, you may contact us and we can assist in stopping the materials.

Over the last few election cycles, we have seen an increase in candidates requesting to visit schools. If a school receives such a request, we must apply certain rules, but they do give schools certain discretion. And, we need to keep a new Florida law in mind that allows sitting School Board members (who could also be incumbent candidates for reelection) to visit schools at any time without prior notice. While this new law allows unannounced visits and allows the member to travel around the school without an escort, sitting School Board members must still follow the same sign-in procedures just as any other visitor.

A school should treat a candidate's request to visit a school exactly the same way it has treated, or would treat, a request from any other member of the public, with the additional caveats re-

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Autism Related Absences

By Heather Wallace, Assistant School Board Attorney

Section 1003.21(2)(b)2, Florida Statutes, requires that absences for an appointment to receive therapy services from a licensed health care provider or certified behavior analyst for the treatment of autism spectrum disorder be excused absences. Schools should make sure that if a parent indicates that they are removing a student with a diagnosis of autism spectrum disorder (regardless of whether they have an

ASD ESE eligibility) from class for such therapies, it is reflected in FOCUS as excused. If the student is missing a significant amount of instructional time for such absences, it should be reflected on their IEP. The team should document the amount of instructional time that is being missed and the subject areas that are affected by these repeated absences. It should be documented in a factual manner

that accurately reflects missed instructional time. ■



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garding incumbent School Board members discussed above and those rules regarding campaigning, described below. School Board Policy 9150, copied in full below, essentially allows a principal to grant or deny visits from the public based upon disruption to the school. So, if a school has generally not allowed any public visitors, you can deny a candidate visitor, but if the school generally allows the public to visit your school, then the candidate should be allowed to visit. It may be that some schools only allow public visits during certain times of the year, such as before and during the application program timeframe, or only outside of the standardized testing windows.

Regarding campaigning caveats, any visiting candidate should be informed that s/he cannot engage in any political campaigning, advocacy, or literature distribution, whether active or passive. This prohibition would include: (1) wearing of shirts or buttons with their names, identification of the district or other seat/office number (e.g., "Florida House District #173"), or related information on it, (2) distributing campaign literature, and (3) speaking to people, whether employees or not, regarding their candidacy. If any visiting candidate is in violation of these rules, please remind him/her of them and ask for compliance. Continued violations should lead to a termination of the visit and a notification to our office so that we can send a reminder of the rules. Lastly, any visiting candidate (other than incumbent School Board candidates) should be accompanied to ensure compliance with these caveats, but you are not required to provide any greater access to the school just because the visitor is

a candidate.

The following are some points to summarize the above rules for candidate visits:

- School Board Policy 9700.01 prohibits school property from being used to advance a political cause or candidacy.
- Principals should treat candidates' requests to visit schools the same way they treat other requests from the public, with the caveats below.
 - If a candidate visits, s/he should be advised of the following in advance of their visit:
 - Based upon the policy, the visitor may not use any attire, speech, literature, or any other form of communication to promote their candidacy while on school property.
 - This prohibition includes, but is not limited to, clothing with names or other political messages, distributing literature, and engaging in conversations with people regarding their candidacy or related matters.
- If a candidate visits, s/he should be accompanied to ensure compliance with these caveats, but should be given no more nor less access than principals provide to other public visitors; except that incumbent School Board candidates may visit unannounced and travel around the school unescorted.

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 me, Heather Wallace, or Laurie Dart at 588-6219.

Policy 9150 – School Visitors

The School Board welcomes and encourages visits to school by parents, other adult residents of the community, interested educators, and representatives of the news media. But in order for the educational program to continue undisturbed when visitors are present and to prevent the intrusion of disruptive persons into the schools, it is necessary to institute procedures regarding visitors.

All visitors must sign in at the main administration building of the school and present a photo I.D. before being granted access. The Superintendent or principal has the authority to prohibit the entry of any person to a school of this District or to expel any person when there is reason to believe the presence of such person would disrupt the orderly and efficient operation of the school. If such an individual refuses to leave the school grounds or creates a disturbance, the principal is authorized to issue a trespass warning and thereafter request from the local law enforcement agency whatever assistance is required to remove the individual. ■



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Court Upheld Decision

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years including four previous special education due process hearings filed by the parents with the Maine Department of Education. When the parents told the school that they intended to send their son to school with a recording device, a school administrator advised them not to do so, but instead stated that they would convene an IEP team meeting to review the accommodation request and, to the extent that the team determined that the recording device was necessary and reasonable, their request would be approved. The mother declined the offer to schedule an IEP meeting. She stated that they were not requesting an educational accommodation under the IDEA, but rather an accommodation under the ADA to allow their son to use the device as an accommodation for his disability that prevents him from telling them what had occurred at school and otherwise advocating for himself.

When the school would not authorize the use of the recording device without the IEP team's review of the request, the parents filed suit in federal court. The school district defended the lawsuit on the basis that the parents failed to exhaust their administrative remedies under the IDEA which requires the parents to challenge the issue in a special education due process hearing. The federal trial court agreed and dismissed the

parents' lawsuit. While the parents' appeal to the appellate court was pending, they filed a new due process complaint with the Maine Department of Education and, following a three day hearing, the hearing officer concluded that the student was already receiving FAPE without the use of a recording device and that the parents failed to demonstrate any educational benefit for wearing the device.

The appellate court found that the hearing officer's decision was binding and foreclosed any possibility of prevailing on a claim under the ADA. On appeal, the court in Pollack v. Regional School Unit 75 reviewed the differences between each of the laws noting that the purpose of the IDEA is to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs. The purpose of the ADA and Section 504, on the other hand, is to ensure that qualified individuals with a disability are not excluded from participation in programs or activities of a public entity because of their disability. In other words, reasonable and necessary accommodations must be made to provide meaningful access to government programs. Because the recording device provided no educational benefit to the student—as already determined in the IDEA administrative proceeding—wearing the device to record what happened during the day was not necessary as an accommodation to provide the student meaningful access to the educational program. ■



*The Legal Department
Wishes You and Your
Family A Safe And
Happy Summer!*