

Legally Speaking

In This Issue

Politicking in the Schools	1,2, 4
Contract Provisions	3
A New Voucher Case	1,4
Reminder— Parental Guests at Meetings	4



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100% Student Success

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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 the calendar turns to an even-numbered year again, we know political campaign season will begin anew and intensify as we enter warmer months. This year, we have municipal elections on March 15th, the primary election on August 23rd, and the general election on November 8th. While this is not a presidential election year, just about every other office will be on the ballot, including congressional seats, governor, state representatives, county and other local offices, and school board seats. During this season, we always like 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

(Continued on page 2)



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.

A New Voucher Case

By: Laurie Dart, Staff Attorney

This past December, the U.S. Supreme Court heard oral arguments regarding a challenge to a state law in Maine authorizing public funding for some students to attend private schools. Families who wanted to send their children to Christian schools challenged, as unconstitutional, the state's exclusion of schools that provide religious instruction from the program.

The statute in Maine is designed to ensure that school districts that do not operate their own secondary schools may send their students to specific private or public schools and tuition will be paid with public funds. However, the tuition assistance program is available only if the student attends a

(Continued on page 4)

Politicking in the Schools

(Continued from page 1)

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, (3) using school logos, photos, or other property in campaign materials, or (4) using photos of schools or staff at schools on 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 employee discipline. At the end of this article, we have included an FAQ section to address some recurring scenarios.

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 Department at 547-7137 or the following website: <https://www.pcsb.orgPage/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 or

question, but it also includes more passive campaigning by employees, such as wearing a shirt or button promoting a candidate or question. 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. Even as we are winding down from the pandemic, we can and have limited nonessential visitors for safety reasons, and that certainly applies to political candidates. However, as we become more open to school visitors, and in recognition of the Florida law that grants certain officials, including elected school board members (who could also be incumbent candidates for re-election), the right to visit schools at any time without prior notice, we need to keep certain items in mind. First, for those who have a right to visit, while this law allows unannounced visits and allows the member to travel around the school without an escort, these visitors must still follow the same safety and sign-in procedures normally used. Second, any visiting candidate, whether there by right or the school’s permission, should be informed that they 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, district or other seat/office number, or other campaign information, (2) distributing campaign literature, (3) speaking to people, whether employees or not, to promote their candidacy, and (4) asking people to sign or distribute petitions regarding 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 reviewed 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 their 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.

(Continued on page 4)

Contract Provisions

By David Koperski, School Board Attorney

Under Florida law, the School Board is generally the entity with the authority to enter into legally binding contracts with vendors and other organizations. Of course, many contracts are not formally approved at a School Board meeting, but that is because the School Board has, by policy, delegated to district and school administrators the power to enter into certain contracts, usually related to the smaller dollar amounts involved. In other cases, statutes specifically allow the district administration to sign certain contracts.

For all contracts, whether or not they go to the School Board for approval, personnel reviewing them should be aware of certain provisions the contracts should contain. The district has a standard template of a 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 form contract. In those cases, we want to ensure the contract addresses most if not all of the following 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 beforehand, if you wish, such as "Pinellas Park High School, on behalf of The School Board of Pinellas County, Florida." 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 outside 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.

● Attorneys' Fees. Contracts should not contain provisions that allow the other party to recover their attorneys' fees incurred in enforcing the terms of the contract. These provisions potentially expose the district to much greater costs than are originally anticipated and could violate the legal provisions regarding sovereign immunity.

● Late Fees, Penalties, Liquidated Damages. For similar reasons, contracts should not contain provisions that allow the other party to recover these fees and penalties in the event we breach the contract.

● Jessica Lunsford Act. The Florida Jessica Lunsford Act requires, with certain exceptions, 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.

● 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, 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. 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. Similar to the public records law described immediately above, another statute requires certain language regarding the federal E-Verify employment eligibility system in certain contracts.

If there is ever any doubt about the existence of signature authority, or the provisions discussed above, please contact our office. In fact, we highly recommend a legal review of all contracts entered into by any district personnel and you may ask for such a review by using the Request for Legal Services (PCS Form 1-3109) here: <https://www.pcsb.org/Page/484>.

Politicking in the Schools

(Continued from page 2)

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.

A New Voucher Case

(Continued from page 1)

non-sectarian school.

In the case of *Carson v. Makin*, the First Circuit Court of Appeals upheld the constitutionality of the program based on First Circuit precedent but recognized the Plaintiff's challenge that an intervening case decided by the U.S. Supreme Court may affect the outcome. That case is *Espinoza v. Montana Department of Revenue* (discussed in *Legally Speaking*, Volume XXI Issue I Fall 2020), where the Supreme Court held that a state may not exclude families and schools from participating in a student-aid program because of a school's religious status. The *Espinoza* decision distinguished between the religious status of the school and the use of the tuition to attend schools that provide religious instruction. As articulated by the Court, the following question will be decided:

"Does a state violate the Religion Clauses or Equal Protection Clause of the United States Constitution by prohibiting students participating in an otherwise generally available student-aid program from choosing to use their aid to attend schools that provide religious, or "sectarian," instruction."

A decision is expected this summer.

Reminder– Parental Guests at Meetings

By David Koperski, School Board Attorney

In Florida, parents have a statutory right to "be accompanied by another adult of their choice at any meeting with school district personnel." See Section 1002.20(21), Florida Statutes. This is true regardless of the purpose of the meeting – it could be a discipline meeting with the AP, a parent-teacher conference, an IEP or Section 504 team meeting, or any other kind of meeting with school staff. Sometimes the other adult is a lawyer representing the parent or student, while in other cases the person is the parent's family member, neighbor, or friend.

Notwithstanding this right, there are some rules we can impose. The law does not specifically allow the other adult to take an active role in the meeting, but we recommend that they be given a reasonable opportunity to give their input so long as they do not dominate the meeting. Remember, the meeting is really between the parent and the school personnel and the other adult is present only to "accompany" the parent. If the other adult is dominating the meeting, or if they become rude or disruptive, the school personnel should remind the parent of the other adult's role and the need to redirect the meeting back to the issues between the school and the parent. If the disruption continues, you can end the meeting and seek to re-schedule it. In these extreme cases, we recommend you contact our office for further guidance. Also, if you know in advance the parent is bringing a lawyer, you can contact our office for advice before proceeding with the meeting, which may lead to one of us also attending.

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The School Board Attorney and Staff Attorney Offices would like to wish you and your families a great school year end and upcoming summer break

