

Legally Speaking

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

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Navigating Conflicting Parental Directions

By: Sara Waechter, Assistant School Board Attorney

One of the most common issues facing school administration and staff throughout the year concerns conflicting parental directions over educational decision-making rights and access to student education records. Section 1000.21, Florida Statutes, defines “parent” to mean “either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent.” The general rule is that parents have the authority to make decisions on behalf of their minor child(ren). Only when they disagree or give conflicting direction on a significant educational decision (such as early release, medication, ESE consents, etc.) are schools faced with having to resolve the dispute.

At times, disagreements between parents can become contentious, frequently placing schools in the middle of these disputes. Faced with this dilemma, it is important for school staff to carefully evaluate the rights of the parties involved. While a conference with the parents may help resolve the problem, this may not always be the case and a decision must nevertheless be made.

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Public Records Requests (PRRs) - Reminders

By: Laurie Dart, Staff Attorney

Florida’s Public Records Act guarantees the public access to governmental records, including records maintained by public schools. Compliance with the law is governed by Chapter 119 Florida Statutes and School Board Policy 8310 (Public Records Inspection and Examination). The following information, while not exhaustive, is intended to provide tips and reminders to help navigate some of the frequently asked questions surrounding public records requests (PRR):

1. Employees cannot ask who is making the request - can be made anonymously
 - person only coming to the front desk of a site to make a PRR, and not to visit the site, should not be required to show ID or be run through background screening.



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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Navigating Conflicting Parental Directions*(Continued from page 1)*

When confronted with this situation, school administration should review School Board Policy 5500.01 (Code of Conduct – Parental Responsibilities). This policy outlines the steps administration should take in determining which party to take direction from when conflict arises. In pertinent part, the policy states:

In the event that the school receives conflicting direction from divorced or separated parents (including parents who were never married) concerning a student, the school may rely on the direction of the parent identified by the following criteria, which are listed in order of priority:

1. First, the parent who is designated in a parenting plan or other Florida court order as having either educational decision-making authority or sole parental responsibility over the student; or
2. Second, if both parents are designated as educational decision-makers with shared parental responsibility, the parent who resides at the address specified in the parenting plan or other Florida court order as the address to be used for school assignment purposes; or
3. Third, if no such parenting plan or order exists or no such address is specified, the parent who resides at the address used by the district for school assignment purposes, whether or not the student is attending their zoned school; or
4. Fourth, if the address on file with the district is not valid or otherwise relevant, the school may rely upon the direction of the parent who enrolled the student.

While the steps outlined in this policy may seem arbitrary to some parents, they are helpful for school staff when given conflicting directions from parents. It is also important to remember that Policy 5500.01 does not affect either parent's right to access education records. Without a court order terminating parental rights or otherwise limiting a parent's rights or access to education records, both parents should be provided equal access to the education records of their child(ren). Similarly, this policy does not impact either parent's right to participate in their child's education, such as attending parent-teacher conferences, IEP meetings, or extracurricular events. As always, should you need help navigating parental disputes, please contact the Legal Department for assistance.

Public Records Requests (PRRs) - Reminders*(Continued from page 1)*

2. Employees cannot ask why the person is making the request - motive is irrelevant.
3. Employees cannot require that the request be made in writing - can be oral.
4. Employees cannot require that the request be made in person - can be made by phone, email, fax, etc.
5. Employees cannot require that the request be made to a certain office.
 - each site must legally receive PRRs, even though the Legal Department may assist in responding.
6. Records must be provided in a reasonable amount of time.
 - amount of time will vary depending upon the exact request – for example, a PRR for a document that is readily available could be handled that day, if not while the person waits.
7. Fifteen (15) cents per page should be charged for any hard copies requested and made.
 - can waive this cost for very short documents.
8. Staff time should be charged if the request takes more than fifteen (15) minutes to complete.
 - actual hourly rate, including fringe, of the lowest paid employee who can do the work.
9. Confidential information must be redacted.
10. No right to record on school grounds, except public meetings (e.g. School Board, SAC meetings).
11. Call Legal Department at 588-6219 for assistance.



Lawsuits Against the District — Torts and Sovereign Immunity

By: David Koperski, School Board Attorney

For very large organizations, like our District, litigation is a fact of life. Most of our litigation relates to injuries or other damages we allegedly caused by our actions or inactions. These cases, known as tort cases, usually involve some form of personal injury and/or property damage sustained by the person suing the District. In law, a “tort” is a wrong that one actor commits upon another that can be remedied in a civil court – in the criminal setting, the same concept is known as a crime. Examples of civil lawsuits other than torts include breach of contract and violations of Constitutional rights. Examples of tort cases that may be filed against us include a bus driver causing a traffic accident that injured others, or a school-based employee not properly supervising a group of students where some of those students were hurt. This article will review the basic principles involving tort cases and discuss the concept of sovereign immunity that provides certain benefits to governmental defendants in tort cases.

When a plaintiff files a lawsuit, it must be based upon a recognized “cause of action,” which essentially refers to the kind of lawsuit it is. Most tort cases will be brought using the negligence cause of action. In Florida, in order for plaintiffs to prevail in a negligence lawsuit, they must prove four things – if they fail to prove all four, then the lawsuit will fail to recover any damages. First, the defendant must owe the plaintiff a duty of care. A duty of care can arise from statutes, School Board policy, court opinions, or other legal sources. One example of a duty of care is that any driver owes every other driver on the road and nearby

pedestrians the duty to drive in a safe manner. In addition, property owners owe their visitors a duty to maintain the property in a safe condition. Lastly, as a public school district, we owe certain duties to our students based upon statutes and court opinions. In short, this duty of care is to take reasonable precautions to protect others from harm. So, each of us in our daily lives owe many other people, many of whom we will never meet, a duty of care.

Second, a plaintiff must prove that the defendant breached its duty of care. This is usually the issue that is contested in negligence cases. Take the example of a driver on the road – if a driver is texting while driving on U.S. 19 and then rear-ends another car, the driver would have violated the duty to drive in a safe manner because texting while driving is illegal in Florida and, even if it wasn’t illegal, it is not safe to do. In the school context, if a bus is involved in an accident, the exact facts will dictate whether our bus driver breached a duty of care. For example, did the bus driver run a red light and cause an accident (duty breached) or did someone pull out in front of a bus without allowing enough room for the bus to brake (duty not breached). Similarly, in the supervision context, if an AP or teacher was supposed to supervise a group of 30 7th graders and left the area for 15 minutes, if a student was injured in a fight, the duty of reasonable supervision and safekeeping was likely breached.

Third, a plaintiff must prove that the defendant’s breach of duty caused the plaintiff’s injuries. Without this causation, the plaintiff cannot recover their damages from the defendant. For example, if a bus going 2 mph hit a car and the driver of that car sued us for causing a

neck injury, we would quickly look into whether the person had the same neck injury before the accident. If they did, then we would likely prevail in our defense because, even though we owed the plaintiff driver a duty and breached it, we did not cause the injury that the person is complaining about. The discovery of pre-existing medical conditions often allows us to successfully dispose of lawsuits brought against us. That said, we must take plaintiffs “as they come” and some people may actually sustain injuries with a 2 mph collision, and we would need to pay for those injuries, even though most people would not be injured by such an accident.

Lastly, a plaintiff must have sustained some damages or injury. So, if a driver rear-ended another car because the driver was texting while driving, but only hit that car going 2 mph, there may be no damages. The person who was hit likely would have no personal injuries and the car may not have any property damage, such as a dented bumper. In this case, the driver owed a duty, breached it, but the person cannot recover any damages because there were none.

Before a person can file a lawsuit against the District alleging negligence or any other tort, Florida law requires them to first send us a notice of the claim and then wait six months before filing in court. This time allows us to work with the claimant in an attempt to resolve the matter without litigation. If we believe that we actually were negligent, we can reach a mutually agreed upon settlement with the person and avoid the time and expenses of a court case.

When a person files a lawsuit, the proper party to name as a defendant is the School Board,

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Lawsuits Against the District - Torts and Sovereign Immunity
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which is the official head of our governmental agency. Plaintiffs sometimes name other parties as defendants, including the District or the individual employee whose actions are in question. However, as discussed in more detail below, individual employees cannot be sued unless their actions were egregious in some manner. If an individual employee is named as a defendant, we would seek to have them dismissed from the lawsuit if we can.

Once a tort case is filed against a governmental agency, like us, we obtain certain benefits from the concept of sovereign immunity. At its purist, sovereign immunity means that no one can sue the government for any reason. Many people have strong feelings about this legal concept, one way or the other. Regardless, in Florida, the Legislature has agreed to relax this standard by passing a law that allows people to sue the government in tort, but limiting who they can sue and how much they can recover even if they win.

Under the Florida sovereign immunity law, an individual plaintiff can recover no more than \$200,000 against a governmental defendant in a tort case, even if the jury awards more. Further, if more than one person was injured in the same incident, the total of all the plaintiffs' recoveries against the government cannot exceed \$300,000.

One exception to this rule is if the plaintiff is successful in passing a special law in the Florida Legislature, known as a "claims bill" that essentially removes those limits just for their specific case. Claims bills must be passed by both

houses of the Legislature and signed by the Governor.

Another benefit of sovereign immunity is that individual employees cannot be named as a defendant in the lawsuit, with certain limited exceptions. So, in the vast majority of cases, if a plaintiff names an individual employee as a defendant, we will have that person dismissed from the case. The primary benefit of this is that the employee will not be personally responsible for the payment of any damages if the plaintiff wins the case. However, the law allows individual employees to be named and held individually liable if the employee was acting outside "the scope of her or his employment or function" or if the employee acted "in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." Thus, so long as employees are doing their jobs and not acting in one of these egregious manners, they cannot be named as a defendant for any damages due to the plaintiff. An example of this exception would be if an employee intentionally hurt another – however, mere negligence like most rear-end vehicle crashes would not rise to this level.

Tort liability is an area of the law that we all need to be aware of and seek to protect against by being as careful as possible as we perform our work duties. But, in the event an accident does happen, we will defend as best we can and seek to dismiss individual employees from lawsuits brought against us.

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DCF Child Protective Investigators - Checking In

The issue has arisen with whether DCF CPI workers are required to show their driver's licenses and/or be run through a background check when arriving at schools to conduct CPI investigations. They are not required to do either of these things, but must show their DCF-issued photo ID, and they must also sign in and out on the visitor log. Thus, please ensure that these important workers are allowed access, as required by law, to our sites and the students and staff on them. The same process should be followed for other state agency workers with state-issued photo IDs.

***The School Board Attorney and
Staff Attorney Offices would like to
wish you and your families a Safe
and Happy School Year End and
Summer!***