

Legally Speaking

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Inside this issue:

What to Do When Divorced or Separated Parents Cannot Agree	1
Did You Know? Legal Department Changes	1
Beware of Copyright Infringements	3
Change in Student Records Law	3



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What to Do When Divorced or Separated Parents Cannot Agree

By James A. Robinson, General Counsel
Laurie Dart, Associate Counsel

Last year, the Florida Legislature amended the law governing dissolution of marriage by removing references to the concepts of “custody,” “primary or secondary residential parent” and “visitation” and replacing them with the concepts of “time-sharing” and “parenting plan.” The changes emphasize the co-parenting responsibilities of divorced parents and require them to establish a “parenting plan” to govern how they will share the responsibilities of raising their children.

The change in the law has resulted in some changes in board policies that help clarify the school’s responsibility when faced with conflicting demands by divorced or separated parents. This article will discuss the revisions to policies that recently were adopted as well as the education-related provisions of a court-approved parenting plan.

The district always has taken the position that each parent has the right to participate fully in the educational process. Unless a court order specifically cuts off the rights of one parent, neither can interfere with the rights of the other. This is consistent with long-standing law as well as the recent changes



Mission Statement

The mission of the Office of General Counsel 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.

(Continued on page 2)

Did You Know?

By David Koperski, Associate Counsel

If you have called us recently, you may have noticed that you were greeted with “Office of General Counsel” as opposed to “School Board Attorney’s Office” or “Staff Attorney’s Office.” That is because the two offices have been consolidated into one - the Office of General Counsel. Certain titles also have changed: Mr. Robinson, formerly School Board Attorney, is now General Counsel. Mr. Koperski, formerly Assistant School Board Attorney, and Ms. Dart, formerly Staff Attorney, are now

(Continued on page 4)

Divorced or Separated Parents
(Continued from page 1)

to state law mentioned previously, which emphasize the concepts of shared parental rights and responsibilities.

The problem arises when divorced or separated parents disagree and give conflicting directions to the school concerning their child's education.

Board Policy 4.01, as revised on July 28, 2009, addresses the conflicting directions problem by specifying the parent upon whose direction the school should rely. It states:

In the event that the school receives conflicting direction from divorced or separated parents concerning a student, the school may rely on the direction of the parent identified as follows:

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

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

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 student assignment purposes; or

Fourth, if this address cannot be

ascertained, the parent who enrolled the student.

Even with a parenting plan or order that calls for shared educational decision-making, there still may be disagreement resulting in conflicting demands on the school. In such cases, **Board Policy 4.01** states that the school may rely on the direction given by the parent who lives at the address designated in the parenting plan or order as the address to be used for student assignment purposes or, if no such address is specified, on the direction given by the parent who resides at the address used by the district for student assignment purposes. If for some reason this address cannot be ascertained, the school may rely upon the direction of the enrolling parent.

(Continued on page 3)

Parenting Plan:

The Florida Supreme Court recently has approved family law forms 12.995(a) and 12995(b), which are the court approved parenting plans. Of particular importance to the school is Section IV, which specifically addresses educational decision-making and states:

IV. PARENTAL RESPONSIBILITY AND DECISION MAKING

1. Parental Responsibility (Choose only one)

() Shared Parental Responsibility. It is in the best interests of the child(ren) that the parents confer and jointly make all major decisions affecting the welfare of the child(ren). Major decisions include, but are not limited to, decisions about the child(ren)'s education, health care, and other responsibilities unique to this family.

OR

() Shared Parental Responsibility with Decision Making Authority. It is in the best interests of the child(ren) that the parents confer and attempt to agree on the major decisions involving the child(ren). If the parents are unable to agree, the authority for making major decisions regarding the child(ren) shall be as follows:

Education/Academic decisions	Mother []	Father []
Non-emergency health care	Mother []	Father []
_____	Mother []	Father []
_____	Mother []	Father []

OR

() Sole Parental Responsibility. It is in the best interests of the child(ren) that the [] Mother [] Father shall have sole authority to make major decisions for the child(ren).

2. Day-to-Day Decisions

Each parent shall make decisions regarding day-to-day care and control of each child while the child is with that parent. Regardless of the allocation of decision making in the parenting plan, either parent may make emergency decisions affecting the health or safety of the child(ren) when the child is residing with that parent. A parent who makes an emergency decision shall share the decision with the other parent as soon as reasonably possible.

Divorced or Separated Parents

(Continued from page 2)



Prior to the recent adoption of **Board Policy 4.01**, the only policy that addressed how to resolve conflicting demands from parents was **Board Policy 4.28** governing early release of students from school. A revision to **Board Policy 4.28** will be adopted along with the rest of the comprehensive policy revisions this fall. It incorporates the identical language from **Policy 4.01** quoted above. Until such time as the revisions to **Policy 4.28**

are adopted, the Office of General Counsel advises that the schools follow the process outlined in **Policy 4.01** if faced with conflicting directions regarding early release of students.

School personnel are encouraged to contact the Office of General Counsel as questions arise during the school year. ■

Beware of Copyright Infringements

By James A. Robinson, General Counsel

The district has received three notices of copyright infringement over the past six months, two of which were based upon publication of copyrighted photographs and one of which was based upon publication of a poem. The photographs were published on the web, as was the poem. No attribution was given. None of the uses met the Fair Use Guidelines. The cost to the district to

settle these infringement claims totaled \$5,500.

According to **Board Policy 8.15**, employees are expected to be familiar with the provisions of the copyright laws currently in effect under Title XVII of the U.S. Code. Please take the time to review and become familiar with the copyright guidelines for educators and staff that are pub-

lished on the district website at <http://www.pinellas.k12.fl.us/lmt/Copyrightsearch.html>. The drop down menu will lead you to the Fair Use Guidelines, which you should refer to anytime you propose to use copyrighted material. Please refer questions to your library media specialist or the Office of General Counsel. ■

Change in Student Records Law

By James A. Robinson, General Counsel

Effective July 1, 2009, Florida's student records law, Section 1002.22, Fla. Stat. (2008), was amended completely to conform to the corresponding federal law, the Family Educational Rights and Privacy Act of 1974 (FERPA).

The new law affords essentially the same rights and protections to parents, or adult students, as did the old:

- Right to inspect and review education records (previously referred to as records and reports);
- Right to request amendment of education records and to a hearing (previously referred to as a right to challenge and hearing); and
- Right to protection against disclosure of personally identi-

able student information absent prior written consent.

The new law defines "directory information" to include the following items the old law did not include:

- ... Electronic mail address,
- ... Photograph,
- ... Date and place of birth,
- ... Grade level, and
- ... Enrollment status.

A school district may adopt a narrower list, and such is the case in our district. In fact, the list of directory information in our district will remain the same as last year with two exceptions: "enrollment status" will be included, and "photograph (e.g., yearbook)" will be substituted in place of "The image or likeness in pictures, videotape, film, or other medium." The latter change is be-

ing made to narrow the scope of what is released as directory information and rely on the media release form for videos and other media releases.

The new law, like the old, provides that student records, now called education records, held by a public school district may not be released unless either (1) the parent consents to release in writing or (2) the release is in accordance with one of the specified exceptions. The exceptions are generally the same as under the old law.

The old law provided a specific exception to the parental consent requirement when student records were released,

"[c]onsistent with [FERPA], to

(Continued on page 4)

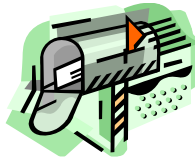
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Did You Know?

(Continued from page 1)

both Associate Counsel. Our mission remains the same: to provide highest quality legal services to the school board, superintendent and district by ensuring timely and accurate legal advice and effective representation on all legal matters. Ms. Dart will continue to represent the position of the superintendent when the school board sits as a quasi judicial body deciding employee discipline cases and student expulsions. This change should be invisible to all of those we serve and will not affect our delivery of services to you as we move forward in our mission to be the best school legal counselors in the state. ■

***“Freedom of expression is the matrix,
the indispensable condition,
of nearly every other form of freedom.”***

***Benjamin Cardozo,
U.S. Supreme Court Justice, 1937***

Change in Student Records Law

(Continued from page 3)

the Department of Children and Family Services or a community-based care lead agency acting on behalf of the Department of Children and Family Services, as appropriate.”

This provision had generally been regarded as affording DCF access to student records when investigating reports of known or suspected child abuse, abandonment or neglect. The new law does not include this exception. However, another federal law, the Child Abuse Prevention and Treatment Act of 1974 (CAPTA), as amended by the Federal Child Abuse Prevention, Adoption and Family Services Act of 1988, specifically requires reporting of known and suspected instances of child abuse and neglect in order to receive grants for abuse prevention and treatment programs. CAPTA authorizes public schools to disclose student records to child welfare agencies when the student is a known or suspected victim of child abuse or neglect. School personnel should continue to provide DCF investigators access to the education records of any student who is the reported victim of known or suspected child abuse, abandonment or neglect.

Another notable change under the new law is that the results of disciplinary proceedings may be disclosed to the victim of a violent crime or nonforcible sex offense without prior consent of the student or parent involved.

It is important to remember that a record must be maintained of each request and disclosure of personally identifiable information, unless that disclosure or request was to or from a parent or student, a school official, someone seeking directory information or someone seeking records where prior consent is not needed to disclose the information sought.

The following links are to the FERPA law and regulations as well as to the Florida Department of Education Technical Assistance Paper on FERPA. Please call the Office of General Counsel with questions concerning student records as they arise during the coming school year.

United States Code: 20 USC 1232g:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=browse_usc&docid=Cite:+20USC1232g

Code of Federal Regulation: 34 CFR Part 99: http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title34/34cfr99_main_02.tpl

Technical Assistance Paper - The Family Educational Rights and Privacy Act (FERPA):

<http://info.fldoe.org/docushare/dsweb/Get/Document-5441/dps-2009-103.pdf>. ■