

# Legally Speaking

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## Social Networking Sites

By Laurie Dart, Associate Counsel

**S**ocial networking sites such as Facebook, MySpace and Twitter, are common among students, parents, teachers and administrators. However, the rules for communicating on these sites as well as communicating electronically in general do not seem to be as clearly defined as those governing communication through traditional means. The following are a couple of “rules of thumb” to keep in mind:

***Do Not Say Anything Electronically That You Wouldn't Say in Person, on the Telephone or in a Letter Home.***

There is something about the nature of electronic communication that tends to cause people to say things that they might not say in person. For example, if you are a teacher, administrator or support staff member, you probably would not dream of calling a student at home, asking the parent to put “Susie” on the phone and then proceed to engage “Susie” in a discussion about a recent movie, idle chit-chat or conversation about issues in your personal life. Why then is it appropriate to communicate with a student on a website, through e-mail or in a text message? The answer is that it is not appropriate. Adults should not have electronic conversations with students if they do not pertain to school or a school-related activity. While many well-intentioned people try to reach out to students in an effort to get on their level and



### Mission Statement

The mission of the Office of General Counsel 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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## The Status of Mediation in the Bradley Desegregation Case

By James A. Robinson, General Counsel

**T**he case of *Leon W. Bradley, et al., v. The Pinellas County School Board, et al.*, was filed in 1964 to desegregate the public schools of Pinellas County. More than 35 years elapsed before the parties reached a settlement that led to the entry

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## E-mail and the Public Records Law

By James A. Robinson, General Counsel

**T**his article will address the topic of e-mail and the public records law, a subject that has been addressed in previous issues of *Legally Speaking*, but due to its importance, is worth revisiting. Employees soon will be introduced to a new e-mail archiving system the district has purchased from a company named ProofPoint. This system will facilitate the storage and retrieval of e-mail both for public record and user convenience purposes. You will receive information about that system directly from MIS.

**E-mail as Public Record.** E-mail messages made or received by district employees in connection with official business are public records and subject to disclosure in the absence of an exemption.

E-mail is subject to the statutory restrictions on destruction of public records. Section 257.36(6), F.S., states that a public record may be destroyed or otherwise disposed of only in accordance with retention schedules established by the Division of Library and Information Services of the Department of State. Section 119.021(2)(b), F.S., states that each "agency" (a school board is an "agency" for public records purposes) shall comply with rules establishing retention schedules and disposal processes for public records that are adopted by the records and information management program of the division.

**E-mail as Student Record.** E-mail that contains personally identifiable information about a student is an education record, and is confidential and exempt from disclosure.

**Private E-mail.** The Florida Supreme Court ruled that private e-mail stored in government computers does not automatically become a public record by virtue of that storage. *State v. City of Clear-*

*water*, 863 So. 2d 149 (Fla. 2003). "Just as an agency cannot circumvent the Public Records Act by allowing a private entity to maintain physical custody of documents that fall within the definition of 'public records,' ... private documents cannot be deemed public records solely by virtue of their placement on an agency-owned computer." *Id.* at 154. The court cautioned, however, that the case before it did not involve e-mails "that may have been isolated by a government employee whose job required him or her to locate employee misuse of government computers." *Id.* at 151 n.2. In other words, if private e-mail becomes part of an OPS investigation file, the file itself becomes public record at some point in time, as do all of its contents including the private e-mail.

**Common Categories of E-mail and Their Retention.** There are some common categories of e-mail that most of us receive. The following is a description of these common categories of e-mail and how long we must retain them.

**Category #1 – Non-Record Materials.** The following e-mail is really not public records and may be deleted at any time:

- birth/death/funeral announcements.
- lost jewelry/keys notice.
- Party announcements (baby shower, wedding shower, retirement, bon voyage, etc.).
- any e-mail not received or created in the course of school district business.

**Category #2 – Notices with No Business Value.** E-mail that falls within this category may be deleted at will. Examples include internal office announcements such as:

- "Jim Robinson called, please call

back"

- "Is this afternoon's meeting still on?"
- "Tomorrow's staff meeting location has been changed to conference room #202."

**Category #3 – Transitory Messages.** E-mail in this category may be deleted after their administrative value is lost. The Florida Department of State, State Library & Archives of Florida's publication of the *General Records Schedule for Local Government Agencies* defines "Transitory Messages" as follows:

"This records series consists of those records that are created primarily for the communication of information, as opposed to communications designed for the perpetuation of knowledge. Transitory messages do not set policy, establish guidelines or procedures, certify a transaction, or become a receipt. The informal tone of transitory messages might be compared to the communication that might take place during a telephone conversation or a conversation in an office hallway. Transitory messages would include, but would not be limited to e-mail messages with short-lived, or no administrative value, voice mail, self-sticking notes and telephone messages."

**Category #4 – Official Records.** E-mail in this category pertains to a particular district business transaction, project/case file, board action or student/personnel issue, and must be retained as long as all other documentation that pertains to the same transaction/project/case/action/issue. To determine the dates of records eligible for destruction, check the current Disposal Authorization. It is published on the district website at

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## New School Board Policy Manual

By David Koperski, Associate Counsel

At its Dec. 8, 2009, regular meeting, the School Board completed the process of adopting its new Policy Manual. At the same meeting, the board rescinded its prior manual. These actions were the culmination of more than two years of work by the board and various departments that prepared the final recommendations for the superintendent, who submitted the policies to the board. The policy review process involved several steps, including each department's review of the policies in its subject area, discussions at board workshops, legal review, final superintendent approval, and submission to the board for final approval.

The new manual contains brand new policies, new policies that were based upon prior policies and some former policies that were retained as is because they did not need updating. It also has a new numbering system. The manual can be found at <http://www.pcsb.org/planning/toc1.html>. You can open the manual

either as a web-based document ("html") or as a non-web-based document ("pdf"). Either format can be searched by key word – the former through the search field on the left side of the screen and the latter by using the "Find" field at the top of the screen.

In addition, to make things easier for those who remember the prior policies' numbers, the manual's website contains links to "crosswalks" that show where the subject matter of a prior policy is addressed in the new policy manual. For example, if you wanted to review the current policy regarding gifts to the school district and knew that the prior policy was policy 7.04, you could use the "old policy to new policy crosswalk" to learn that that subject matter is now addressed in policy 7230. The new manual is organized into the chapters listed below. Note that a separate chapter exists for each employee group – administrators (1000), instructional staff (3000) and support staff (4000). This way, you

easily may find all of the policies that relate to a specific category of employee.

- 0000 Bylaws
- 1000 Administration
- 2000 Program
- 3000 Instructional Staff
- 4000 Support Staff
- 5000 Students
- 6000 Finance
- 7000 Property
- 8000 Operations
- 9000 Community Relations

As you work within the new policies, if you find that something is missing from the old policies, please advise your supervisor or the planning & policy department so that the issue can be reviewed and the new policies corrected, if needed. If you have any questions regarding the policy review process or the new manual, please contact the planning & policy department. ■

### **Bradley**

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of an order withdrawing federal supervision and granting "unitary status." Judge Steven D. Merryday described a "unitary" school system in his Amended Final Order dated Aug. 16, 2000, as one "that not merely has disestablished the pernicious racial segregation that scarred the school system and its participants before 1954 but to the extent feasible has erased the tangible vestiges of that infernal system to the extent that the hands and hearts of well-meaning persons in practicality can accomplish."

In 2005, a dispute arose between the *Bradley* plaintiffs' counsel and the school board concerning progress made in the areas of student achievement, student discipline and assignment to classes and programs.

The parties proceeded to mediation in accordance with the alternative dispute resolution (ADR) provision of the amended order. The school board raised procedural objections to the invocation of ADR, but that is not important for purposes of this article. The parties have so far reached agreement on the subject of student achievement in the form of a Memorandum of Understanding (MOU) that was signed by the plaintiffs' counsel and approved by the school board on July 28, 2009. The MOU can be viewed at <http://www.pcsb.org/attorney/bradleymediation.html>.

The parties are now negotiating a second MOU on student discipline, and it appears agreement is near. Once that MOU is approved, the parties will negotiate on the subject of assignment to classes and programs.

The purpose of mediation, as expressly agreed to by the parties, is not to lay blame nor is it to change the settlement terms of the *Bradley* case as approved by the amended order. Rather, through mediation the parties seek in good faith to reach an understanding on "means and methods" for achieving improvement in the quality of education for all students, including black students who were, of course, the focus of the *Bradley* desegregation lawsuit.

The plaintiffs' counsel are Enrique Escarraz, Esq., and Roger Plata, Esq. Their mediation team is comprised of Dr. Goliath Davis, Mr. Watson Haynes, Dr. Henry Oliver, Rev. Martin Rainey and Mr. Clarence Givens. Mr. Norman Brown is also in attendance as a member of the NAACP. Representing the school board are James

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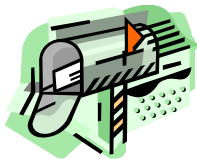
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**Bradley**

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A. Robinson, General Counsel, and David Koperski, Associate Counsel. Present with them are Dr. Julie M. Janssen, Ed.D., Superintendent, and James Madden, Deputy Superintendent. Other district staff members who played an important role in the mediation process are Mrs. Catherine Fleeger, Deputy Superintendent, and the Directors of Operation, Mr. Alec Liem, Mr. Ward Kennedy and Mrs. Patricia Wright. ■

**E-mail**

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[www.pinellas.k12.fl.us/recman/home1.html](http://www.pinellas.k12.fl.us/recman/home1.html).

Beginning March 4, 2010, the district's new e-mail archiving service, ProofPoint, will go into operation. The principal purpose of the archiving service is to assist the district in complying with the Public Records Request Act by providing the technology to store e-mail and readily search and retrieve it by key word search criteria in response to public records requests.

This service will permit you to delete e-mail from your personal e-mail box and still retrieve it from the archive. There is no need to keep personal folders with older e-mails.

For assistance in determining which e-mail can be deleted, consult with the district's records custodian, Robin Tew, at (813) 854-6077, ext.1000. ■

**Social Networking**

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build a relationship with the student, it is important to remember that all conversations need to remain professional. For the same reasons that you would not hang out with a group of students at the mall, you should not post, tweet or otherwise participate in personal conversations among students on the internet.

***The Only District-Sanctioned Sites are Moodle and the District's Twitter Site.***

Although many people have personal Facebook, Twitter or MySpace accounts, the district does not sanction the use of these sites for communicating with students or colleagues about school board business. There are several reasons for this. First, electronic communications relating to school board business are public records that need to be preserved and maintained in accordance with Florida's Public Records Law. The district is not able to assure compliance on sites over which it has no control. Second, information containing personally identifiable student information is confidential under state and federal law, which means that there is an affirmative duty on the part of district employees to protect this in-

formation from unauthorized disclosure.

The district has created its own site known as Moodle, which is a secure site allowing teachers, parents and students to participate in discussions and share information relating to school. It can be accessed at <http://moodle.pcsb.org>. Moodle allows for the use of Web 2.0 tools such as blogs, wikis, podcasts, discussion forums and others in a secure environment. Students can maintain their own profile but are protected from adults or even other students outside of their class. If there are questions regarding the use of Moodle, please contact Michelle Frankich at [frankichm@pcsb.org](mailto:frankichm@pcsb.org) for a full explanation of the benefits and use of this website.

The district also has a Twitter site found at (<http://www.twitter.com/pcschools>). This site is used to communicate with the public and has processes in place to comply with legal considerations referenced previously. The district is also in the process of exploring the use of Twitter for communication of schoolwide events and schoolwide communication. For more information about a schoolwide Twitter account visit here: <http://wiki.pinellas.k12.fl.us/default.aspx/PinellasTechnology/Twitter>. ■