

Legally Speaking

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Differentiated Accountability in a Nutshell, Part II

By James A. Robinson, General Counsel

The last issue of *Legally Speaking* contained an article entitled *Differentiated Accountability in a Nutshell*, which described differentiated accountability (DA) as a system of school improvement that categorizes schools and provides the lowest performing schools with the greatest levels of intervention. State Board of Education Rule 6A-1.099811, Florida Administrative Code, implements the provisions of Section 1008.33, Florida Statutes, governing school improvement and accountability.

As noted in the last article, the Florida Education Association challenged the DA rule. Shortly after publication of the rule, a settlement was reached and a compromise rule was submitted to and approved by the State Board of Education with an effective date of Aug. 11, 2010.

Changes in the DA rule resulting from the compromise include:

- Schools are now categorized as: Schools Not Required to Participate in Differentiated Accountability Strategies, Prevent I, Correct I, Prevent II and Correct II, based on their performance in Adequate Yearly Progress (AYP) and the school grade at the elementary and middle school level. For high schools, the FCAT performance points are used in place of the school grade.
- References to collective bargaining were deleted, which is understood to

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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.

Religion in the Schools - A Refresher

By James A. Robinson, General Counsel

Laurie A. Dart, Associate Counsel

This article is intended as a refresher for teachers and school administrators on the subject of religion in the school. Please understand that the law alone cannot answer every question. Teachers, school administrators, parents and communities must work together to apply the First Amendment fairly and justly for all students in our public schools.

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Differentiated Accountability

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mean that whatever needs to be bargained will be bargained in accordance with applicable law and the terms of the collective bargaining agreement.

- Strategies and supports which involve the compensation, reassignment or replacement of personnel must be implemented by use of a “fair, consistent, transparent and reliable system.”

Click on this hyperlink to see the rule in its entirety: [DA Rule](#).

Gibbs High School is now in Intervene Status. What Support Systems and Strategies Must/May be Implemented as a result?

Gibbs is in Intervene Status because.

- the percentage of non-proficient students in reading increased when compared to the percentage attained five years earlier;
- the percentage of non-proficient students in mathematics increased when compared to the percentage attained five years earlier; and
- 65 percent or more of the school's students are not proficient in reading.

The strategies and support interventions required of schools in Intervention are the same as those required for other schools in need of improvement, and they fall into seven areas:

- school improvement planning,
- leadership quality improvement,
- educator quality improvement,
- professional development,
- curriculum alignment and pacing,
- the Florida Continuous Improvement Model and
- monitoring plans and processes.

For Intervene schools:

- The school implements interventions.
- The district and Florida Depart-

ment of Education (FDOE) conduct onsite monitoring of intervention implementations.

- The district and FDOE provide intensive onsite support.
- In the event the school does not make sufficient progress to exit the Intervene category within one year, the district must choose one of the four reconstitution options discussed below.

Intervene Status; Exiting the Intervene Category; Consequences of Failing to Exit.

A school must make significant progress after one year to exit Intervene status. Significant progress is defined as:

- The school's letter grade improves to a “C” or better and
- The school's AYP performance improves so that at least one subgroup in reading and at least one subgroup in mathematics that previously did not make AYP has made AYP.

In the event a school in the Intervene category fails to make significant progress within one year and exit the Intervene category, the district and FDOE will provide assistance with the selection and implementation of one of the four following reconstitution options for the school:

- Reassign students to another school and monitor the students' progress;
- Convert the school to a district-managed turnaround school;
- Close the school and reopen the school as a charter school or multiple charter schools or
- Contract with an outside entity to operate the school. This option requires the district to enter into a contract with a management company having a proven success record of improving low-performing schools.

Relationship between DA and Race to the Top (RTTT)

The RTTT Memorandum of Under-

standing (MOU) was approved by the School Board and the Pinellas Classroom Teachers Association on May 11, 2010, and timely submitted to the FDOE. The U.S. Department of Education announced on Aug. 24, 2010, that Florida is a winner of the federal Race to the Top Phase 2 competition. This funding will be dedicated to carrying out a broad range of strategies designed to improve our lowest performing schools and increase the academic achievement of our students—a goal shared in common with DA.

Such strategies will include implementation of one of four “school intervention models” in all “persistently lowest-achieving schools” located in the district. In Pinellas those schools identified in the MOU are: Boca Ciega, Dixie M. Hollins, Lakewood and Gibbs High Schools. Persistently lowest-achieving schools are identified based upon the school categories devised for DA as described above. These school intervention models are substantially the same as the “reconstitution options” under the DA rule. They are: 1) turnaround model (includes replacing principal and screening of existing staff and rehiring of no more than 50 percent of existing staff); 2) restart model (convert or close and reopen as a charter or an entity known as a charter management or education management organization); 3) school closure and 4) transformation model (involves replacement of the principal and a host of school improvement and professional development measures).

The superintendent will now finish up the grant paperwork, and the parties, including the association, will submit the Final Scope of Work under the RTTT MOU, which is due between Sept. 15 and Oct. 13, 2010. The FDOE must make final approvals and submit to the U.S. Department of Education by Nov. 22, 2010. Details concerning the Final Scope of Work and implementation of the plan will be forthcoming. ■

Diabetes Management in Schools

By David Koperski, Associate Counsel

A new Florida law affords certain protections and rights to public school students with diabetes. While Pinellas County Schools was providing similar protections and rights to students prior to the new law, this article will serve to remind staff of our practices, which have now been codified in law, as well as new initiatives.

On May 11, 2010, Governor Crist signed 2010 General Session House Bill 747 into law. The new law became effective on July 1, 2010. Under the law, a school district may not restrict the assignment of a student who has diabetes to a particular school on any of the following bases: (1) the student has diabetes; (2) the school does not have a full-time school nurse; or (3) the school does not have trained diabetes personnel. This does not mean that every school in our district must have a full-time nurse or personnel who can administer insulin or other diabetes medication. However, as discussed below, students may carry and administer their own medication with a physician's authorization. If students are too immature to do so, parents

can be offered the opportunity to administer the medication themselves or elect a school with a full-time school nurse or other personnel trained to administer the medication.

As noted above, the new law also empowers diabetic students, under certain conditions, to carry diabetic supplies and equipment with them while at school, school-sponsored activities and during transportation to and from school, as well as to self-manage their condition (check their blood sugar) and self-administer medication when necessary. To secure this right, parents must submit their signed authorization and the signed authorization of the child's physician to the school principal. The authorizations must specifically indicate that the student is authorized to carry diabetic supplies and equipment on their person and attend to the management and care of their diabetes while in school, participating in school-sponsored activities and in transit to or from school or school-sponsored activities. The written authorizations must identify the diabetic supplies and equipment that the student is authorized to carry and shall describe the activities the child is

capable of performing without assistance, such as performing blood-glucose level checks and urine ketone testing, administering insulin through the insulin-delivery system used by the student and treating hypoglycemia and hyperglycemia.

Another provision of the law protects our personnel from possible damages that may be incurred by a student who carries and uses this medication. By statute, our school district, its employees and volunteers and the Department of Health must be indemnified and held harmless by the parent of a student authorized to carry diabetic supplies or equipment for any and all liability with respect to the student's use of such supplies and equipment pursuant to this new law.

The State Board of Education, in cooperation with the Department of Health, is in the process of adopting rules relating to this new law that will further clarify our obligations. Our district is closely monitoring this rule-making process and will provide further updates and training to relevant personnel once the final rule is completed. ■

Religion

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Any discussion of religion in schools should start with the fundamental principle that:

*Public schools may not inculcate nor inhibit religion. They must be places where religion and religious conviction are treated with fairness and respect. Public schools uphold the First Amendment when they protect the religious liberty rights of students of all faiths or none. Schools demonstrate fairness when they ensure that the curriculum includes study about religion, where appropriate, as an important part of a complete education.*¹

1. Religion may be taught in public schools. As the U.S. Supreme Court said in *Abington v. Schempp*, "[I]t might be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization." School Board Policy 2270 recognizes that "[T]eaching about religion is a legitimate part of a complete education on the elementary and secondary levels." The policy permits teaching about religion "where the curriculum guides indicate it is appropriate and when the classroom atmosphere encourages both teachers and students to be responsible and to respect the rights of each person." As noted in Board policy:

A. Religion instruction is the re-

sponsibility of the parents and religious institutions, but teaching about religion is a legitimate part of a complete education on the elementary and secondary levels.

B. Teaching about religion should always operate within the context of First Amendment rights and responsibilities. In order to ensure the activity is constitutional, its purpose and effort should be to educate about rather than promote a religion. The activity should also avoid excessive entanglement between school and religious organizations.

C. As a part of the curriculum, religious literature, music, drama and the arts may be included, provided each is intrinsic to the learning ex-

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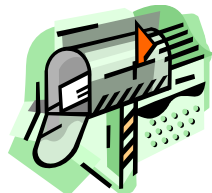
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Religion

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perience in the various fields of study and presented objectively.

Such teaching must foster knowledge about religion, not indoctrination into religion; it should be academic, not devotional or testimonial; it should promote awareness of religion, not sponsor its practice; it should inform students about diversity of religious views, rather than impose one particular view and it should promote understanding and respect, rather than divisiveness.

2. Religious holidays may be recognized in the classroom. Be aware of the difference between teaching about religion and celebrating religious holidays. You may recognize and provide information about holidays, focus on how and when they are celebrated, their origins, histories and generally agreed-upon beliefs. Teachers may not use the study of religious holidays as an opportunity to proselytize or inject personal religious beliefs into the classroom setting.

3. You may use religious symbols as a teaching aid or resource. Such items may be used provided they are used only as examples of cultural or religious heritage and are displayed only on a temporary

basis as part of the academic lesson being studied. Students may choose to create artwork with religious symbols, but teachers should not assign or suggest such artwork.

4. You may use art, drama, music or literature with religious themes. Such themes should be included because of their academic or aesthetic value, not as a vehicle for promoting religious belief. School concerts that present a variety of selections may include religious music. However, concerts dominated by religious music, especially when they coincide with a particular religious holiday, should be avoided.

5. Students may be absent for religious instruction. School Board Policy 5223 and Section 1003.21, F.S., provide that, upon signed written request of the parent or adult student, the student may be excused from attendance at school for a reasonable period of time to receive religious instruction outside the school building by an authorized church or religious organization. The time for release for religious instruction or education is subject to approval by the principal, who must require the appropriate continuance of the instructional program during such release times.

6. You may not pray with students in school. As a government employee, you are subject to the Establishment Clause of the First Amendment and thus required to be neutral concerning religion while fulfilling your official duties. Thus, you do not have the right to pray with or in the presence of students during the school day. Teachers are permitted to wear such items as a non-obtrusive cross or Star of David, but should not wear clothing with a proselytizing message such as "Jesus Saves."

7. Students may express religious views in school. Students may pray individually or in groups in school or discuss their religious views so long as they are not disruptive. The Establishment Clause does not apply to purely private speech.

8. Students may form extracurricular religious clubs. School Board Policy 5730 and the federal Equal Access Act of 1984 ensures that, consistent with the First Amendment, student religious clubs are accorded the same access to public school facilities as are student secular activities.

9. Students may not generally distribute religious materials in school. Schools may impose the same reasonable time, place and manner or other constitutional restrictions on distribution of religious material as they do on nonschool material generally, but may not single out religious material for special regulation. ■

¹ Principle IV "Religious Liberty, Public Education, and the Future of American Democracy."