

Legally Speaking

Copyright © 2011 by The School Board of Pinellas County, Florida

VOLUME XI, ISSUE 4

School Year End 2011

In This Issue

The "Student Success Act"	1
Changes to Board Policies Regarding Discrimination and Harassment	1
Communicating with Students Via Electronic Media	3
Did you know ...	4



The School Board of Pinellas County, Florida, prohibits any and all forms of discrimination and harassment based on race, color, sex, religion, national origin, marital status, age, sexual orientation or disability in any of its programs, services or activities.

School Board Members

Carol J. Cook
Chairperson
Robin L. Wikle
Vice Chairperson

Janet R. Clark
Terry Krassner
Linda S. Lerner
Peggy L. O'Shea
Lew Williams

Julie M. Janssen, Ed.D.
Superintendent

www.pcsb.org

The "Student Success Act"

By James A. Robinson, General Counsel

On July 1, 2011, the controversial Student Success Act will take effect. Otherwise known as Senate Bill 736, the Act will substantially and significantly affect teacher "tenure," contracts, evaluations and compensation. This article will highlight the essential elements of the Act.

Contracts with instructional personnel hired on or after July 1, 2011—Beginning July 1, 2011, individuals newly hired as instructional personnel will be awarded a "probationary contract." A probationary contract means an employment contract for a period of 1 school year awarded to instructional personnel upon initial employment in a school district. Probationary contract employees may be dismissed without cause or may resign without breach of contract. Thus, the current 97-day probationary period will be extended to cover the entire first year. A school board may not award a probationary contract to the same employee more than once unless the employee is rehired after a break in service for which an authorized leave of absence was not granted. A probationary contract is granted regardless of previous employment in another school district or state.

Professional service contracts to be phased out—No new professional service contracts may be awarded after June 30, 2011. Thus, those who are eligible, and who are recommended by the Superintendent, must be awarded a professional service contract by the School Board before July 1, 2011, or else they will remain on annual contract. Teachers who have professional service contracts will continue to

(Continued on page 2)



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.

Changes to Board Policies Regarding Discrimination and Harassment

By: David Koperski, Associate Counsel

At its March 15, 2011, meeting, the School Board revised its policies regarding discrimination and harassment based upon a protected characteristic, such as age, and related policies regarding student and public complaints about other matters. The purposes of the revisions were to clarify individuals' rights and to bring uniform-

(Continued on page 4)

Student Success Act
(Continued from page 1)

serve under those contracts. Those teachers who are presently in their first or second year will always remain on annual contract. Many have argued that this is unfair to those teachers who selected a district in which to work on the assumption that one day they would hold a professional service contract and enjoy some measure of “tenure.” It remains to be seen whether this provision of the Act will be challenged in court.

Instructional personnel and school administrator evaluation systems—The Act requires evalua-

tion systems for instructional personnel and school administrators that differentiate among four levels of performance as follows:

1. Highly effective.
2. Effective.
3. Needs Improvement or, for instructional personnel in the first three years of employment who need improvement, Developing.
4. Unsatisfactory.

School boards may establish a peer assistance process as part of the regular evaluation system or to assist employees placed on performance probation, newly hired classroom teachers, or employees who request

assistance.

Evaluations are to be conducted at least once each year, except that a newly hired classroom teacher must be observed and evaluated at least twice in the first year of teaching in the school district.

At least 50% of a performance evaluation must be based upon data and indicators of student learning growth assessed annually over three years or more, unless such data does not exist. The following table describes the type of data, and the applicable percentage of the evaluation for classroom teachers, other instructional personnel and school administrators.

Category	Student Learning Growth Data Over 3 Years or More	Percent of the Evaluation	Student Learning Growth Data of Less Than 3 Years	Percent of the Evaluation
Instructional personnel who are classroom teachers	Growth data for students assigned to the teacher	At least 50%	Growth data for students assigned to the teacher	At least 40%
Instructional personnel who are not classroom teachers	Growth data for students assigned to the personnel	At least 50%	A combination of student learning growth data and other measurable student outcomes that are specific to the assigned position.	At least 30%
School administrators	Growth data for students assigned to the school	At least 50%	Growth data for students assigned to the school	At least 40%

The Act leaves the 90-day performance probation in place for professional service contract teachers. Under the new annual contract language, an annual contract may be awarded only if the employee has not received two consecutive annual performance evaluation ratings of unsatisfactory, two annual performance evaluation ratings of unsatisfactory within a three year period or three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory. The grounds for suspension

and dismissal of annual contract personnel are largely the same as now, except that a hearing contesting a suspension or dismissal must be held before the school board or a subcommittee thereof, not before an administrative law judge.

Compensation and salary schedules—The Act requires the adoption of a “performance salary schedule” by July 1, 2014, that provides annual salary adjustments for instructional personnel and school administrators based upon performance. Those hired on or after July 1, 2014, or those professional service con-

tract or continuing contract personnel who choose to opt into the performance salary schedule, will be compensated pursuant to the performance salary schedule once they have received the appropriate performance evaluation for this purpose. Those who choose to opt-in will thereafter be employed on an annual contract basis.

After July 1, 2014, the base salary for instructional personnel or school administrators who opt into the performance salary schedule will be the sal-

(Continued on page 3)

Communication with Students Via Electronic Media

By James A. Robinson, General Counsel

On March 15, 2011, the Board took the first step toward adoption of a new policy governing faculty and staff communications with students via electronic media such as Facebook, Twitter and cell phone messaging. Communications with students via such means are more than likely to create student records, or to contain personally identifiable student information, which must remain confidential under the law. Communications with staff about school-related matters are more than likely to create public records. The Board has a legal duty to preserve and protect such records, as you know. In order to fulfill that duty, the policy will require that all communications regarding school-related business be conducted through means furnished by the district. These presently include district e-mail (Outlook), Portal, Moodle and Twitter. The District has the technical ability to protect against the disclosure of student records and personally identifiable student information, and to maintain public records as required by law.

The policy will also serve to avoid even the appearance of impropriety that could arise out of communicating with students over Facebook and

other such private means. Such private communications are not prohibited by the new policy, but they are discouraged. Any misconduct arising out of private communications is, of course, governed by other Board policy governing employee misconduct and by the Principles of Professional Conduct Governing the Education Profession in Florida.

The policy will not go into effect until shortly before the commencement of the 2011-12 school year, so there will be time for faculty and staff to come into compliance with its requirements. A training video is being prepared for viewing at schools. The current version of the policy reads as follows:

Policy 3213.01 – Communication with Students via Electronic Media

(1) The School Board encourages positive and professional communication between staff and students by means which best protect the interests of all concerned. Communications via personal electronic media such as Facebook, Twitter, cell phone messaging and other personal electronic means regarding school matters have the potential to create both public records

and education records, or to contain personally identifiable student information. The School Board is ultimately responsible for the maintenance and proper disposal of such records and for the protection of such confidential information, and is dependent upon its employees to meet this responsibility.

(2) The school Board has provided staff with the means to communicate electronically with students concerning school matters. These means currently include PCS Portal, Moodle and district e-mail (Outlook), and are sufficient for the purposes intended. For staff to communicate on school matters with students by personal electronic means when sufficient School Board means are available exposes the School Board to a possible violation of its legal obligations. Such communication could cause the appearance of inappropriate association with students. Accordingly, staff shall utilize School Board resources in all electronic communications with students regarding school matters. ■

Student Success Act (Continued from page 2)

ary paid in the prior year, including adjustments. Those who receive evaluations of “highly effective” and “effective” may receive salary adjustments (those rated as highly effective instructional personnel receiving more than those rated as effective). Those assigned to Title I eligible schools, those assigned to schools in the bottom two levels of the school improvement system, those certified and teaching in critical shortage areas, and those assigned additional academic responsibilities may be entitled to a salary supplement.

Lower Performing Instructional Personnel—The district must annually report to the parent of any student who is assigned to a classroom teacher or school administrator having either (i) two consecutive annual performance evaluation ratings of unsatisfactory, (ii) two annual performance evaluation ratings of unsatisfactory within a three year period or (iii) three consecutive annual performance evaluation ratings of needs improvement or a combination of needs improvement and unsatisfactory. Under these circumstances the evaluation rating will no longer be confidential for the school year in which it is given and the next school

year, as it is under current law.

Finally, the new law gives the school principal the right to refuse to accept the Superintendent’s transfer to his or her school of instructional personnel who do not have a performance rating of effective or highly effective. It remains to be seen how many school principals, whose annual contracts are subject to the Superintendent’s recommendation, will exercise their rights under this provision of the new law. ■

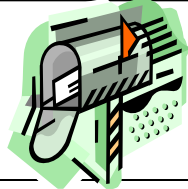
**PINELLAS COUNTY
SCHOOL BOARD
OFFICE OF GENERAL COUNSEL**

301 Fourth St. SW
PO Box 2942
Largo, FL 33779-2942
Phone: 727-588-6220
Fax: 727-588-6514
E-mail: davisme@pcsb.org

Legal Staff Members

James A. Robinson, General Counsel
David A. Koperski, Associate Counsel
Laurie A. Dart, Associate Counsel
Betty Turner, RP, Paralegal
Kerry Michelotti, Legal Secretary
Barbara Anson, Legal Secretary
Melanie Davis, Clerk Spec II - Newsletter Publisher

Please send comments or suggestions for future articles to Melanie Davis at davisme@pcsb.org.



Did you know ...

... that e-mails, text messages, voice mails and any other kind of electronic communication that contains district business are still public records, subject to inspection and copying, even though done on a personal computer, phone or other electronic device?

Changes to Policy

(Continued from page 1)

ity to the protections of and complaint procedures used by various individuals, such as students, employees or vendors. The policies summarized below may be found on the district's website at <http://www.pcsb.org/planning/toc1.html>. The following is a summary of the policies revised and their recent changes.

Policies 1362, 3362, 4362, 5517 – Policy Against Harassment and Discrimination.

These four policies are exactly the same, but are located in four separate chapters of the Policy Manual in order to apply to the different categories of individuals: Chapter 1000, covering administrative staff; Chapter 3000, covering instructional staff; Chapter 4000, covering support staff; and Chapter 5000, covering students. These policies protect students, parents, employees, applicants for em-

ployment, vendors, volunteers and other members of the public from discrimination and harassment within the district based upon age, sex, race, color, national origin, religion, disability, sexual orientation, marital status or any other characteristic protected by federal or state law or other Board policy. In addition, they also prohibit retaliating against an individual because they filed a complaint or took part as a witness during an investigation, filing a malicious or knowingly false complaint or disregarding or unduly delaying the investigation of a complaint.

The policies also contain a procedure for filing and investigating a complaint, including a description of where to file, a deadline to file and the steps needed to complete an investigation. If a complainant is not satisfied with the ultimate results, s/he may appeal the result to the Superintendent or her designee. In any case, a complainant may always seek to file a complaint with a federal or state agency, such as the Florida Office of Civil Rights or the federal Equal Employment Opportunity Commission.

These policies were revised to clarify the protected groups of individuals, provide uniformity to the processes, clarify the complaint procedures and to streamline the policies so they are more easily understood and implemented.

Policy 5500.13 – Code of Student Conduct – Grievance Procedures

This policy, which is part of the Student Code of Conduct, outlines a process whereby a student or parent may seek to resolve a complaint or disagreement with the school or district that does not involve (i) discrimination or harassment on the basis of the protected characteristics discussed above, which are covered by those policies, or (ii) suspensions or expulsions, which have their own appeal procedures elsewhere in the Code of Student Conduct. Examples of complaints covered by this policy include personal conflicts between a student and a specific employee, or a decision an employee made affecting a student. Remember that complaints of bullying by a student, employee, or volunteer are treated separately under ***Policy 5517.0, Policy Against Bullying and Harassment***. This policy was revised to clarify what complaints are covered by the policy and add cross-references to the other revised policies.

Policy 9130 – Public Complaints

This policy, similarly to the one above for students, describes a process whereby a member of the public may file a complaint not involving discrimination or harassment on the basis of the protected characteristics discussed in ***Policies 1362, 3362, 4362, 5517*** discussed above. There are separate procedures for complaints regarding district services or operations and those regarding employees. A complaint and investigation process is described, including a right to an appeal to the superintendent or her designee if the complainant is not satisfied with the resolution of the matter. This policy was revised to align with the other policy changes discussed in this article. ■