Pinellas County School Board - Office of General Counsel

Legally Speaking

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In This Issue

Student Use of Social Network Sites

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

Recent court decisions illustrate the tension arising from an application of traditional "student speech" legal principles in the Internet age. Two cases in particular involve students posting inappropriate, offensive and defamatory material on a MySpace page. The challenge for the court was to balance the students' First Amendment right of free speech against the schools' right and responsibility to maintain a safe and secure learning environment. The law in this area is evolving and, in fact, two bills currently pending in the Florida Legislature address this issue.

The cases were federal appellate court cases out of the Third Circuit Court of Appeal and in each case a student created a fictitious MySpace profile mocking the school principal. The postings took place off school grounds, after school hours and on personal computers. Both students were suspended and in each case the parents challenged the suspension on First Amendment free speech grounds. The appellate court ruled in favor of the student in both cases. In one opinion (*Layshock*) the court traced the history of First Amendment jurisprudence relating to student speech commencing with the *Tinker* black armband case in which the Supreme Court announced the often quoted statement that "students do not shed their constitutional rights to freedom of speech or expression at the schoolhouse gate." Recognizing that, in the internet age, "*Tinker*'s

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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.

"No Contact" Orders

By James A. Robinson, General Counsel

You have heard us say that the District is not responsible for enforcing divorce decrees, or other court orders establishing the rights of parents, including those establishing visitation rights and schedules. School administrators too often find themselves sandwiched between warring parents. We have always noted an exception where student safety is at stake. Such is the case with "no contact" orders against students enjoining them from contacting student victims. If you are faced with such a "no contact" order, you should pay heed to it because of the potential harm to the student victim. Indeed, the board is legally and contractually bound to do so. This type of "no contact" order should be distinguished from one entered in favor of one

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Transportation of Students in Private Vehicles

By James A. Robinson, General Counsel

As a general rule, students must be transported in school buses for all regular transportation, which means transportation of students to and from school or school-related activities that are part of a scheduled series or sequence of events to the same location.

Pursuant to Florida Statute 1006.22 and Board Policy 8660 - Transportation, principals or their designees may authorize the use of privately owned vehicles to transport students on a case-by-case basis only in the following four circumstances:

1. Illness or Injury. When a student is ill or injured and must be taken home or to a medical treatment facility under nonemergency circumstances; and;
   a. The school has been unable to contact the student's parent or the parent or responsible adult designated by the parent is not available to provide the transportation;
   b. Proper adult supervision of the student is available at the location to which the student is being transported;
   c. The transportation is approved by the school principal or designee, or in the absence of the principal and designee, by the highest ranking school administrator or teacher available under the circumstances; and;
   d. If the school has been unable to contact the parent prior to the transportation, the school must continue to seek to contact the parent until the school is able to notify the parent of the transportation and the pertinent circumstances.

2. School Function or Event. When the transportation is in connection with a school function or event regarding which the district or school has undertaken to participate or to sponsor or provide the participation of students; and
   a. The function or event is a single event that is not part of a scheduled series or sequence of events to the same location, such as a field trip, a recreational outing, an interscholastic competition or cooperative event, an event connected with an extracurricular activity offered by the school or an event connected to an educational program, such as a job interview as part of a cooperative education program;
   b. Transportation is not available, as a practical matter, using a school bus or school district passenger car; and
   c. Each student's parent is notified, in writing, regarding the transportation arrangement and gives written consent before a student is transported in a privately owned motor vehicle.

3. Performance of Job Duties. When a district requires employees such as school social workers and attendance officers to use their own motor vehicles to perform duties of employment, and such duties include the occasional transportation of students.

4. Emergencies. The law recognizes and provides for unforeseen emergencies. If you are faced with an emergency situation that constitutes an imminent threat to student health or safety, you may take whatever action is necessary under the circumstances to protect student health and safety. Such action could include transporting students in privately owned vehicles.

Only District employees, parents or other responsible adults may provide transportation for school-related business in privately owned vehicles, not students. When employees are authorized to do so, they are deemed to be "acting within the scope of their employment. When parents or other responsible adults are authorized to do so, they have the same exposure to, and protections from, risks of personal liability as do district employees acting within the scope of their employment. What this means is that employees and authorized adults are immune from liability arising out of their simple negligence in privately transporting students. Such is not true for students. You should not authorize students to transport other students for school related functions--such practice is not authorized by statute and exposes the student drivers, their parents and the school board to the risk of liability for accidents and injuries.

Remember that board policy requires the principal's advance written approval of any transportation of students in privately owned vehicles. Further, any private vehicle used for the transportation of students must be owned by the approved driver or the spouse of the approved driver and must conform to registration and insurance requirements of the state.

Usage of private vehicles must also meet all other transportation criteria for field trips as described in Risk Management's "*Field Trips, Sporting Trips and S chool Activities Guide,*" which may be updated shortly.

Students may only be transported in designated seating positions and must use the occupant crash protection system (seat belt, shoulder harness, etc.) provided by the manufacturer. Lastly, the responsibility of instructional staff members for the discipline and control of students extends to their transportation of students in a private vehicle. Drivers who are not instructional staff members are also required to report student misconduct to the principal. ■

I Received a Subpoena - What do I do?

By David Koperski, Associate Counsel

Almost on a daily basis, someone somewhere in the district receives a subpoena. This article will describe what subpoenas are and how you should react if you receive one. A subpoena is an official demand that the recipient (i) appear in person at a court hearing or deposition to testify, and/or (ii) produce documents. Subpoenas usually have a court case caption on the top, but they do not necessarily come from a judge. In fact, most are issued by the clerk of a court on behalf of an attorney for one of the parties in the court case. Other subpoenas may be issued by administrative agencies.

Florida law contains specific requirements for the proper service of a subpoena, although we often see subpoenas that do not meet these requirements. Under Florida law, a subpoena of any type generally must be handed to you by a person eighteen years of age or older who is not a party to the lawsuit or given to someone who resides with you at your home, provided that the person is over fifteen years of age. This means that a subpoena should not be sent to you by mail or facsimile transmission, or dropped off at your school's front desk with instructions to give it to you unless that person is authorized to accept the subpoena on your behalf. If you are properly served with a subpoena, you need to comply with it. If you do not, you may be held in contempt of court and face a court-imposed fine.

Regardless of how you receive a subpoena (for example, hand-delivery by a process service, mailing, fax), we ask that you immediately contact our paralegal, Betty Turner, at 588-6247, with any questions. She can advise you of the best course of action and place you in touch with one of the attorneys if the matter is more complex or time sensitive. She can also let you know if the lawsuit involves a district matter, even if we are not a named party. If the lawsuit does not involve the district, but rather is a private matter (for example, a custody dispute between parents), please make sure you contact us if the subpoena requests that you bring copies of "student records" with you. Such records are confidential under state and federal law, and the district must follow a process to notify the parent of the student whose records are sought before we release them.

If the date and time identified in the subpoena create an unavoidable conflict in your schedule, please let us know so that we may under-take efforts on your behalf to either excuse you from attendance or reschedule the date and time of your appearance. Often we can contact the attorneys involved or file a motion to "protect" you during the scheduled time frame or to "quash" the subpoena if it was not issued or served in compliance with the law. Whether these efforts will be successful depends on a number of factors including whether you are commanded to appear for a deposition or trial, whether the trial is a bench or jury trial, whether the subpoena is in proper form and properly served with reasonable notice and the required witness fee, as well as the nature of the case. Please understand that proper subpoenas carry the weight of a court order and most judges will not excuse a mere inconvenience in a witnesses schedule.

If you are served with a subpoena and there are no issues regarding your ability to attend, you should contact your supervisor and obtain approval for a "temporary duty elsewhere" leave in compliance with Board Policies 1235/3235/4235. ■

New Feature - "SNAPshot"

Beginning with this issue of *Legally Speaking*, we are introducing a new feature that provides a Snapshot of New and Amended Policies (SNAPshot) that have received final school board approval since the last issue of *Legally Speaking*. The board usually addresses one or more policies at its regular meetings. SNAPshot feature will provide a brief description of the new or amended policies that have successfully navigated the policy-making process and become board policy. For this inaugural feature, we have four policy amendments that received final Board approval since our last issue of this newsletter.

Policy 0143.1 – District Board Member Residence Areas. Slight changes were made to the geographic boundaries of the school board member residence areas to comport with similar changes to the County Commission residence areas. The board revisits this policy every 10 years based upon population shifts shown through the decennial federal census.

Policies 2410 – Special Services; 5330 – Use of Medications; and 8453.01 – Control of Blood-Borne Pathogens. Changes were made to the *School Health Services Manual* to update practices in the school health field, including assisting diabetic students with administration of their medication. Because all of the listed policies incorporate the *School Health Services Manual* by reference, they all needed to be amended. ■

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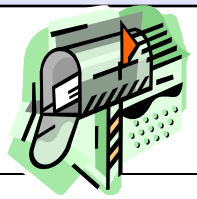

Student Use of Social Network
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'schoolhouse gate' is not constructed solely of the bricks and mortar surrounding the school yard", the court ultimately concluded that "the concept of the 'school yard' is not without boundaries and the reach of school authorities is not without limits … It would be an unseemly and dangerous precedent to allow the state, in the guise of school authorities, to reach into a child's home and control his/her actions there to the same extent that it can control that child when he/she participates in school sponsored activities." In the second case (*J.S.*) the court emphasized that no Supreme Court decision has "ever allowed schools to punish students for off -campus speech that is not school-sponsored or at a school-sponsored event and that caused no substantial disruption at school."

In each of the cases discussed above, the location and ownership of the computers and servers used by the students were important factors in determining that the speech was "off-campus," which limited the ability of the school to regulate the student's speech. The schools could only have justified the discipline if the off-campus speech caused a "substantial disruption" to the school environment. The campus disruption is the nexus between the off-campus speech and the school environment that gives the school the jurisdiction to impose discipline. In each of the above cases, there was no such nexus. Mere inconvenience, embarrassment, ridicule or gossiping on school grounds won't do it. The disruption has to be of a nature that substantially interferes with teachers teaching and students learning.

Just because the MySpace or Facebook posting may amount to bullying or harassment does not give the school jurisdiction to discipline. The Florida Legislature made that clear in the bullying statute, which limits the jurisdiction of school boards to bullying "through the use of data or computer software that is accessed through a computer, computer system, or computer network of a public K-12 educational institution."

School board jurisdiction may be broadened to some degree by pending legislation (SB 622 and HB 627) that would, among other things, prohibit bullying or harassment of a student or school employee by use of any computer, computer system or computer network that is physically located on school property, regardless of ownership; and require that any complaint of a computer-related incident of bullying be investigated by a school district official using a computer on which web-filtering software is not installed. We will monitor this legislation and report on its progress. This legislation would cover a posting made on campus by use of a personal smartphone or tablet.

Because this is an evolving area involving constitutional rights, please consult the Office of General Counsel before taking disciplinary action in any case involving Internet speech. ■

"No Contact" Orders
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spouse or other party against another. You are not obligated to facilitate in the enforcement of such an order.

By signing the Cooperative Agreement with the Department of Juvenile Justice, the School Board agreed, in fulfillment of its obligations under Sec. 1006.13(6), F.S., to help facilitate the enforcement of "no contact" orders entered against students. In accordance with this agreement, schools should work with the area superintendent to facilitate allowing the offender to attend another school in the district provided the other school is not attended by the victim or sibling of the victim. Alternatively, the offender may be allowed to attend a school in a different district if the offender is unable to attend a different Pinellas County school. If neither scenario is possible, the schools should take any reasonable precaution necessary to keep the offender separated from the victim and victim's siblings in school and on school transportation, to include without limitation in school suspension of the offender; scheduling of class, lunch or other school activities of the victim (or sibling) and the offender so as not to coincide.

Feel free to call the Office of General Counsel for advice on this or any other topic of interest to you at 588-6219. ■