

Legally Speaking

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Child Protective Investigators – What can they do at my school?

By David Koperski, School Board Attorney

Schools may sometimes be visited by Department of Children and Families (DCF) investigators working in the Child Protective Investigations (CPI) area. These individuals are investigating child abuse, neglect and/or abandonment. The CPI investigators will likely ask the principal to either interview a student while at school or to allow the investigator to remove a student from the school as part of the investigation. In cases where the suspected abuse is occurring at home, schools are the most logical place for the investigator to speak with the child. This article provides guidance on how school-based administrators should handle these visits and CPI requests.

In Pinellas County, DCF has contracted with the Pinellas County Sheriff's Office to provide CPI services. Thus, the investigator is employed by the sheriff's office and may be a sheriff's deputy acting as a CPI investigator. You should always ask for their photo identification proving their identity as CPI investigators working on behalf of DCF. If you have any question whether the identification is authentic, you may confirm that the person is employed as a CPI investigator by calling the investigator's local office or the DCF's abuse hotline number (1-800-96ABUSE). If your site receives a visit from a CPI investigator, you should keep in mind the following rules.



Mission Statement

The mission of the School Board Attorney and Staff Attorney Offices 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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Background Screening of Volunteers

By Dr. Valerie Brimm, Director, Office of Strategic Partnerships
Laurie Dart, Staff Attorney

The district initiative to enforce School Board Policy 9180, which requires that volunteers having unsupervised contact with students undergo Level 2 screening, is well underway. To date, 1,700 volunteers have had their fingerprints submitted to the district's recommended vendor, EZ Fingerprints, and have obtained the required clearance. Level 2, a screening process where fingerprints are cleared through the database of the Florida Department of Law Enforcement and the FBI, is not required for every volunteer, but only those who are left unsupervised with students for more than just unanticipated and incidental occurrences. Under Policy 9180,

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On-Campus Student Interviews

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1. Court Orders. School-based administrators should always follow applicable court orders. CPI investigators have the ability to secure a court order empowering them to take protective custody of a child in the event that the investigator feels that there is an imminent threat to the well-being or safety of a child.

2. DCF Protective Custody. Even absent a court order, DCF investigators have the right to take protective custody of a child if the investigator has probable cause to support one of the following findings:

- a. That the child has been abused, neglected, abandoned or is suffering from or is in imminent danger of illness or injury as a result of abuse, neglect or abandonment;
- b. That the parent or legal custodian of the child has materially violated a condition of placement imposed by the court; or
- c. That the child has no parent, legal custodian or responsible adult relative immediately known and available to provide supervision and care.

If the CPI investigator states that one or more of these criteria is met, then they have the right to remove the child, even during the school day. The decision whether one of the criteria is met belongs to the investigator and we are not responsible for determining whether the facts sup-

School officials are required to cooperate with, assist and provide information to DCF and its CPI investigators during their investigations.

port such a decision. School-based administrators should work with the CPI investigator to determine who will contact the parent; unless the investigator authorizes us to contact the parent (see below), then we may not contact them.

3. Cooperation with Investigations. School officials are required to cooperate with, assist and provide information to DCF and its CPI investigators during their investigations. See section 39.0014, F.S. School officials should not notify parents of the investigation without the advance knowledge and consent of the CPI investigator. This is a very rare instance where we do not notify parents of an investigation but is appropriate since, in many cases, the parent or other household member is the subject of the investigation and notice to the parent could impede the investigation and even put the child in danger.

4. Presence of School Staff at On-campus Interviews of Student. School staff has no right to be present during an initial CPI interview of a student at schools, but may be present if the investigator and student agree to it. See section 39.301

(18), F.S. The CPI investigator has the power to advise school staff that they cannot be present during the interview. However, the investigator may allow a school staff member who is known by the child to be present during the initial interview if (1) the investigator believes that the school staff member could enhance the success of the interview by his or her presence; and (2) the child requests or consents to the presence of the school staff member at the interview. Further, school staff may not keep a separate record of the CPI investigation.

5. Sharing of Student Records. The law allows school officials to release student records to CPI investigators without the consent of the parents where it appears that release is necessary to protect the health or safety of the student or other individuals, such as a sibling. While this decision must be made by the school-based administrator, he or she should certainly take the gravity of the circumstances into account when making that decision.

If you have any questions about how to handle CPI investigations at your school, or need assistance reviewing court orders or other documentation, please contact us. Additionally, the Florida Department of Education published a helpful resource book for Florida school personnel: A Tool For Reporting Abuse and Supporting the Child, is available online at <http://www.fldoe.org/family/abuse.asp>. ■



“Character is like a tree and reputation like a shadow. The shadow is what we think of it — the tree is the real thing.”

- Abraham Lincoln

SNAPshot

By: David Koperski, School Board Attorney

A couple of issues ago, we introduced the SNAPshot feature, which provides a summary of new and amended school board policies adopted since the last update. We will include this feature in *Legally Speaking* if there are significant policy changes to discuss. All policies are collected in the official School Board Policy Manual, which can be found on the district website by clicking on the "District Bylaws and Policies" link under the "About Us" tab at the top of the main page.

Since our last SNAPshot feature, the superintendent has recommended and the school board has adopted several new and amended policies. The following is a summary of the more significant ones.

Policies 1213.01/3213.01/4213.01 – COMMUNICATIONS WITH PARENTS AND STUDENTS VIA ELECTRONIC MEDIA. These policies, which are the same, but exist in three separate Policy Manual chapters that apply specifically to teachers, support staff and administrators, were first adopted in 2011. The policies generally state that staff and volunteers may not communicate with students and parents regarding school-related matters using the staff member's or volunteer's private electronic resources, such as a personal cell phone or a Facebook or Twitter account. There is an exception where district electronic resources are not available and it is in the best interest of all concerned for the staff member to communicate with the student or



parent immediately. The policies were adopted to protect the confidentiality and archiving of student records and public records, as well as to protect staff from unfounded allegations of inappropriate conduct with students. The policies were recently amended in two respects. First, since the original policies only applied to communications to students, parents were added. Second, volunteers were made subject to the policies so

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Use of Race in University Admission Policies - U.S. Supreme Court Case

By Laurie Dart, Staff Attorney

In a 2003 case titled *Grutter v. Bollinger*, the United States Supreme Court upheld a policy at the University of Michigan Law School which utilized race as one of the factors to be considered in reviewing applications for admission to the law school. The Court held that the Fourteenth Amendment's Equal Protection Clause did not prohibit a university's "narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body." The issue is once again before the Supreme Court in *Fisher v. University of Texas*.

The *Fisher* case involves two white women who were denied admission to the University of Texas at Austin ("UT") in 2008. They sued, alleging that the admissions policy discriminated against them on the basis of race in violation of their right to equal

protection under the Fourteenth Amendment and federal civil rights statutes. They ask that the Supreme Court either overrule *Grutter* or declare the admissions policy of UT inconsistent with the policy approved in *Grutter*. Since UT closely tailored its policy to the policy already approved by the Supreme Court, finding an inconsistency may be unlikely. In granting summary judgment in favor of UT, the lower federal court in Texas noted that "it would be difficult to construct an admissions policy that more closely resembles the policy approved by the Supreme Court in *Grutter*," and "as long as *Grutter* remains good law, UT's current admissions program remains constitutional."

The admissions program at UT has two components: First, students are admitted under the "Top Ten Percent Plan," which is a state law that requires the university to admit all

Texas residents who rank in the top ten percent of their high school class. Second, for those students who do not graduate in the top ten percent of their high school class, they are admitted following a holistic "whole-file" review of applications where UT considers a whole host of non-academic criteria, such as essays, leadership qualities, extracurricular activities, awards, work experience, community service, family responsibilities, socio-economic status, languages spoken in the home, and race. If the Supreme Court overrules *Grutter*, it could end affirmative action policies in admissions at U.S. public universities. Justice Kagan recused herself from the deliberations, leaving an even number of justices (eight) to decide the issue. The Court heard oral arguments in October and a decision could be issued at any time from now until mid-2013. ■

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SNAPshot

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that they, as well as employees, must abide by the policies' restrictions.

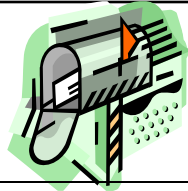
Policy 8351 – CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS. This policy was adopted in compliance with federal and state statutory provisions and emphasizes the importance of maintaining the confidentiality of social security numbers (SSNs) and limiting the collection of them to areas when they are necessary. There are numerous statutory provisions relating to SSNs that we must follow. For example, we must redact, or blacken out, SSNs from any documents that are released in response to a public records request. Also, even though we request students' SSNs when they enroll, the law allows them to enroll without providing it.

Policy 7320.01 – DISPOSAL, SALE, OR EXCHANGE OF TANGIBLE PROPERTY. This policy was amended to create the District Surplus Property Committee and to establish various procedures for the efficient and effective disposal of surplus property, including seeking to maximize the price in sales of surplus property. The Surplus Property Committee, which is comprised of staff and a representative of the business community, has certain powers to designate property as surplus and determine the method of disposal of surplus property, including redistribution to other district sites, auctions and other sales.

Policy 2110 – DISTRICT STRATEGIC PLAN. This policy was amended to change the procedure for adoption of the District's Strategic Plan. Prior to this amendment, the Strategic Plan was actually written into policy, but now the superintendent simply recommends a plan to the school board, who will act upon it at one of its meetings. The Strategic Plan is a document that briefly describes the overall focus of the district. You may view the 2012-13 Strategic Plan at https://www.pcsb.org/images/stories/RA/Policy/District_Strategic_Plan_2012-13.pdf.

Policy 2260.03 – SECTION 504. This policy was amended to reflect changes in certain identification, discipline and due process provisions. Section 504 is a federal law that prohibits discrimination based upon a qualifying disability and provides eligible students with an opportunity to obtain certain accommodations in their educational programs in order to "level the playing field." ■

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



Volunteers

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most volunteers will not require Level 2 screening because most volunteers are not left alone with students. Typically, teachers, coaches or other staff are present and oversee activities when volunteers are helping out. In cases where volunteers do not work within the sight of the staff and are alone with students, for example when students are driven in a car by a volunteer, the heightened screening has been required. The screening is only necessary every five years.

The Office of Strategic Partnerships would like to thank all of the volunteers for their patience in working through this process, and their commitment to the students, despite the cost and burden of this process. If there are questions or concerns, contact Dr. Valerie Brimm or Michele Roberge at 588-6000 ext. 1843. ■

The School Board Attorney and Staff Attorney Offices
would like to wish you and your family
a safe and happy
Holiday Season.