

# Legally Speaking

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## Student Records – Part II - Exceptions to Confidentiality

By David Koperski, School Board Attorney

**T**his article is the second in a two-part series discussing the basic rights of parents and students in the area of student records. The last issue of *Legally Speaking* provided definitional background in this area and summarized the four basic rights of parents and students under the Family Educational Rights and Privacy Act (FERPA), which is the federal law that governs student records that has essentially been adopted as the law of Florida. Remember that student records, or “education records” as used by FERPA, are defined as any type of record that “directly relates” to a student and that is maintained by the school or the district. However, there are some records that are excluded from the definition, such as records in the sole possession of the author (like a teacher) that are not shared with others; please refer to the last issue for more information on these exclusions.

This article will be devoted to the student record issue that receives the greater number of questions and litigation – namely, when may a school district, without the consent of the parent, release student records or the information contained in them

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### 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.

## I Received Restitution Paperwork in the Mail – What Do I Do With It?

By David Koperski, School Board Attorney

**Y**our school or department may, from time to time, receive mail from the State Attorney's Office indicating that your school may have an interest in a criminal or delinquency case. Usually, this takes the form of a cover letter signed by an Assistant State Attorney and enclosing a blank form entitled “Victim Impact Restitution Statement.” It may also take the form of a court order notifying you that a hearing has been scheduled in a criminal or delinquency case.

This paperwork relates to a crime or delinquent act that was allegedly committed where the district has some interest, such as vandalism at a school. In these

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## Student Speeches at Graduation Ceremonies

By Laurie Dart, Staff Attorney

A recent opinion issued by the Second Circuit Court of Appeals is a reminder that the First Amendment's Establishment Clause may limit the content of a student's speech at graduation ceremonies. In A.M. v. Taconic Hills Central School District, an eighth grade middle school student who had been elected class co-president of the student council, was permitted to deliver a brief message at the annual Moving-Up Ceremony scheduled in the auditorium of the school. Several days before the ceremony, the student asked her teachers to review her draft speech. Upon reading the speech, the teachers became concerned about the appropriateness of the final sentence in the speech, which read: "As we say our goodbyes and leave middle school behind, I say to you, may the LORD bless you and keep you; may His face shine upon you and be gracious to you; lift up His countenance upon you and give you peace." The teachers brought their concerns to the attention of the faculty advisory of the student council as well as the school principal. All of them agreed that the religious nature of the quotation was problematic although none of them knew that the source of the language in the final sentence of the speech was a quotation from verses 24-26 of chapter 6 of the Book of Numbers of the Old Testament.

The principal requested that the stu-

dent remove the last sentence of her speech because it could be perceived as an endorsement of one religion over another. Initially, the student and her mother refused to remove the lines and gave the principal pamphlets that they located on the internet describing the rights of public school students under the Free Speech Clause of the First Amendment. Ultimately, the student agreed to remove the last sentence after being told that she would not be permitted to speak at the ceremony unless she removed the last sentence from her speech. Shortly after the ceremony, a suit was filed against the school district alleging violations of, among other things, the student's rights under the First Amendment of the United States Constitution.

A three judge panel of the Second Circuit Court of Appeals issued its decision on January 13, 2013 concluding that the speech given at the Moving up Ceremony constituted "school-sponsored expressive activities" and that in light of the school district's involvement in directing the ceremony and in reviewing the speeches before they were delivered, a reasonable observer would perceive the speech and its religious message as being endorsed by the middle school. The Court held that although the school district's request to have the religious message removed from the speech constituted content-based discrimination, the



school district was authorized in regulating the speech because its desire to avoid a violation of the Establishment Clause represented a legitimate pedagogical concern.

Last year, the Florida Legislature adopted 1001.432 F.S., authorizing a district school board to adopt a policy authorizing an "inspirational message" to be delivered by students under prescribed circumstances. Even if the school board were to adopt such a policy, which has not occurred, the standards enunciated by the United States Supreme Court in Santa Fe Independent School District v. Doe prohibit speech at a school sponsored event which could reasonably be perceived to endorse religion. As the graduation season approaches, schools should be reminded of the First Amendment limitations, of a student's right to free speech. ■

***"In recognizing the humanity of our fellow beings, we pay ourselves the highest tribute."***

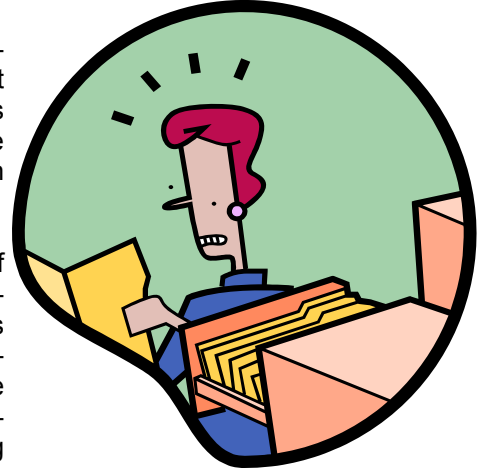
***- Justice Thurgood Marshall, United States Supreme Court***

## Student Records

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to an outside person, agency or entity? One of the four parental rights discussed in the last issue is the right to privacy and confidentiality of student records and the information contained in them. Recall that you may always release student records if you have signed written parental consent. The written consent must specify the records to be released, identify the person or entity to receive the records and state the purpose of the disclosure.

Federal and state law, however, provide exceptions to the general rule of confidentiality. If one or more of these exceptions apply, then we may release student records without parental consent. FERPA lists 17 exceptions and Florida law may add others, such as #18, which is an example of #5 below. The following is a summary of these exceptions, some of which are rarely used, and most of which contain detailed security and non-redisclosure requirements that must be adhered to by the district releasing the records or information and the person or entity receiving them.



1. Other district staff or contractors who are conducting district business. This exception allows records to be released to "school officials," as defined in School Board Policy 8330, who have a "legitimate educational interest" in viewing the record. For example, a third grade teacher may share a student's records with the fourth grade teacher who will be teaching the student next year, but cannot share that student's records with a teacher at another school who is a personal friend of the teacher simply because it is of personal interest. Further, this exception allows us to share records with outside vendors under contract with PCS who are performing a function that we would otherwise perform ourselves. For example, we may hire nurses from a nursing agency to serve students' health needs because we have a shortage of nurses; in this case, we would contract with the nursing agency and then could share records with the outside nurses, but our contract with them would contain restrictions on the use and redisclosure of these records.
2. Officials of other educational institutions where the student seeks to enroll, such as another Florida or out-of-state school district where the family moved or a postsecondary school.
3. Certain federal agencies, including the United States Attorney General and the United States Department of Education, for purposes of audits or evaluations of certain educational programs.
4. Release in connection with financial aid for which the student or parent has applied.
5. Release in connection with state laws that meets certain conditions (see #18 below for an example of a state law that Florida added in its statutes that would meet this criteria).
6. Organizations conducting studies for, or on behalf of, educational agencies to (i) develop, validate or administer predictive tests; (ii) administer student aid programs; or (iii) improve instruction.
7. Accrediting organizations to carry out their accrediting functions.
8. Parents of eligible students who are dependents of the parents. This exception allows the parents of an 18 year old student who is still a dependent of the parents to view the student's records; otherwise, since the rights of a parent transfer to a student at age 18 (see last issue for a discussion of "eligible student"), a parent would not be able to view their student's records, even though the student still lives at their parent's home and is supported by their parent.
9. Court orders or subpoenas, under certain conditions. If we receive a court order or subpoena allowing a third party to view student records, such as a guardian ad litem or a party to a lawsuit in which the family is involved, we must send the parents a notice advising them that we have received this documentation prior to releasing the records.



10. Health or safety emergency. This exception would allow medical professionals to access a student's health information in an emergency situation.

11. "Directory information," which is information that would not generally be considered harmful or an invasion of privacy if disclosed. This list of information is created by each school district and, in PCS, it is limited by School Board Policy 8330 to the following: the student's legal name; photograph; major field of study; grade level; enrollment status; dates of attendance; participation in officially recognized activities and sports; weight and height of members of athletic teams; degrees, honors and awards received; the most recent educational

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***Restitution Paperwork***

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cases, the district may be able to obtain restitution, which is a monetary recovery from the person who committed the crime or delinquent act. For example, if a person broke into a school over the weekend and stole computers, then the district could seek a court order requiring the person to pay us for our costs to repair the building and replace the computers. The original request for restitution is the Victim Impact Restitution Statement, which asks for a description of the damaged/stolen property and the fair market value or repair cost of each item, as well as a general description of the impact of the crime.

If you receive mail regarding restitution, please immediately send it to the School Board Attorney's office via pony or e-mail to Kerry Michelotti, legal assistant, at [michelottik@pcsb.org](mailto:michelottik@pcsb.org). We will review the matter, the underlying crime or delinquent act, and will call you back if the district desires to pursue restitution. Depending upon the amount of loss and realistic ability to recover from the offender, the time and expense of seeking restitution may not justify a recovery effort. When you send the information, you should provide any site-specific information that would not normally be contained in district records of repairs and replacements. Of course, a police report will have likely been completed for most vandalism and thefts.

If the district seeks restitution, you will be asked for assistance in completing the necessary forms, including copies of bills and receipts of any repairs not processed at the district level. Once all of the paperwork is completed, the Risk Management Department will submit the completed statement to the court and track the matter. ■

***Student Records***

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agency or institution attended; the subsequent educational institution attended; and academic work intended for publication or display. Of note, directory information does *not* include address, phone number, e-mail address, grades in courses, disciplinary information or ESE information. We may release directory information if a parent has not "opted out" of its release. Each year, we give parents an opportunity to sign the opt-out form located in the Code of Student Conduct and return it to the school. If they have opted out, then we may not release directory information without their written consent. Related to directory information is a law requiring high schools to release high school students' names, home phone numbers and addresses to military recruiters and recruiters from institutions of higher education, unless the parent opts out of this release. This opt out form is located on the same page as the directory information opt out form in our Code of Student Conduct.

12. Release is to students who are not eligible students, or to parents of students who are not eligible students. This exception makes clear that students, and divorced parents who may claim the other cannot see the student's records, can view the records.
13. Release is to a victim of certain violent or sexual offenses, under certain circumstances.
14. Disciplinary proceedings at postsecondary educational institutions.
15. Release is to a parent of a postsecondary student when the student is accused of certain violations of law or school policy.
16. Release relates to sex offenders and other individuals required to register under federal laws regarding violent crime.
17. Release is to a child welfare caseworker who has the right to access the student's case plan when that person's agency is legally responsible for the child, subject to certain restrictions.
18. Parties to an interagency agreement between Florida schools, the Florida Department of Juvenile Justice, law enforcement agencies and other related agencies relating to the reduction of juvenile crime.

Unless our release of student records or personally identifiable information contained in them is covered by one of the exceptions discussed above, we must secure signed written parental consent in order to release it to outside persons or entities. If you have any questions regarding student records or the release of them in accordance with one of these exceptions, please contact us. ■