

Legally Speaking

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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.

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Rules Prohibiting Discrimination and Harassment

By David Koperski, School Board Attorney

Numerous federal and state laws address discrimination and harassment in both the employment and non-employment arenas. Examples of these laws include the Civil Rights Act of 1964 (including Title VI and Title VII), the Americans with Disabilities Act, the Age Discrimination in Employment Act and the Florida Educational Equity Act. The School Board has adopted various policies to codify these rules and provide additional procedures for their implementation and enforcement. This article provides a summary of these policies we must follow in our interactions with each other as employees, as well as our interactions with our students, families, volunteers, vendors and visitors. The complete School Board Policy Manual may be found on www.pcsb.org by navigating to the "About Us" tab and then clicking "District Bylaws and Policies."

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

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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.

Academic Freedom as an Exception to Garcetti Rule Limiting First Amendment Rights of Public Employees

By Laurie Dart, Staff Attorney

The U.S. Court of Appeals for the Ninth Circuit recently held that the so-called Garcetti rule, which limits the First Amendment protection afforded speech by public employees, does not apply to teaching and writing on academic matters. This rule is derived from the United States Supreme Court case Garcetti v. Ceballos, 547 U.S. 410 (2006), where the Court held that a public employee's speech is

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Update on Parent Meeting Requirements, and on Exceptional Student Education

By Heather Wallace, Assistant School Board Attorney

A very significant piece of legislation was passed in the last legislative session, Senate Bill 1108. While this bill was known as a bill that dealt with Exceptional Student Education (ESE), the bill actually contained provisions that go beyond the ESE realm.

- Parent Meetings. The bill contained a requirement, now codified in Section 1002.20, Florida Statutes, that school district personnel and parents sign a form at the conclusion of any meeting between district staff members and parents indicating that district personnel did not discourage or attempt to discourage the parent from inviting another person of their choice to attend the meeting with them. This requirement applies to all meetings between district staff members and parents, regardless of whether the student is a general education student or an ESE student. The form that should be used to satisfy this requirement is being added to the

form for Conference Report (PCS form 2-760) which is currently available from Central Printing Services.

- Center Placement and Alternate Assessment. Parents must now give consent to initial placement or continuing placement of a student in an ESE center. Consent from parents is also required before a student may be administered an alternate assessment or provided instruction in state standards access points curriculum. Forms have been developed by the Department of Education for both of these situations and are currently in use by ESE staff members. The ESE department has drafted guidelines for the procedures to be followed if parents indicate that they will not give consent or if the parents are nonresponsive to attempts to obtain their consent in these situations.
- Collaboration with certain private instructional personnel. Those personnel designated in the legisla-

tion (including behavior analysts, speech pathologists, occupational therapists, physical therapists psychologists and clinical social workers) hired by the parents must be permitted to observe students in the educational setting, collaborate with instructional personnel and provide services as long as certain requirements are met. Those requirements include consent to the time and place of service, and background screening requirements. The district is currently finalizing a form agreement with private providers and procedures for handling such requests.

- Certification Requirements. Beginning July 1, 2014, an applicant wishing to renew a professional certificate must have a minimum of one college credit or the equivalent in-service points in the area of instruction for teaching students with disabilities. This requirement does not add to the total hours required for continuing education or in-service training. ■

Academic Freedom (Continued from page 1)

not protected by the First Amendment when the speech is made pursuant to his official duties. The case involved an assistant district attorney who worked as a calendar deputy. As part of his duties, he examined an affidavit that had been used to obtain a search warrant in a pending criminal case. He concluded that the affidavit contained serious misrepresentations and wrote a memorandum recommending to his supervisors that the case be dismissed. The supervisors disagreed with him and proceeded with the prosecution. Ceballos initiated a lawsuit alleging that he had been subjected to a series of retaliatory employment actions as a result of the memorandum in viola-

tion of his free speech rights under the First Amendment. The Supreme Court stated that citizens who choose to work for the government must accept certain limitations on their freedoms because, like private employers, government employers require a degree of control over their employees' words and actions to ensure the efficient provision of public service. The Court stated "when public employees make statements pursuant to their official duties, the employees are not speaking as citizens for First Amendment purposes, and the Constitution does not insulate their communications from employer discipline." The Court left open the possibility of an exception from its ruling in cases of academic freedom stating "we need not, and for that reason do not, decide

whether the analysis we conduct today would apply in the same manner to a case involving speech related to scholarship or teaching."

In the recent Ninth Circuit case of Demers v. Austin, 729 F.3d 1011, applied the possible exception mentioned in Garcetti. Demers was a tenured associate professor at Washington State University. He authored and distributed two documents – the first was a pamphlet describing recommendations for restructuring the faculty and the second was a draft introduction and chapters of a book entitled "Ivory Tower" which was critical of the university. After receiving two negative performance evaluations and a for-

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Rules*(Continued from page 1)*

for employment, 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 and 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 his 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.

Policies 1122/3122/4122 – Nondiscrimination and Equal Employment Opportunity

These policies are similar to those above, but specifically apply to any program or activity for which the Board is responsible or for which it receives financial assistance from the U.S. Department of Education. The policies also contain provisions regarding the district's compliance officer for non-discrimination. Currently, that person is a Director in the Human Resources Department.

Policy 2260 – Nondiscrimination and Access to Equal Educational Opportunity

This policy relates to the district's employment practices and its delivery of educational services and states that discrimination on the basis of race, ethnicity, national origin, gender, disability, marital status or sexual orienta-

tion against a student or an employee is prohibited.

Policy 5517.01 – Policy on Bullying and Harassment

This detailed policy implements a Florida law prohibiting bullying and harassment and applies to students and employees alike. The policy defines "bullying," "harassment" and "cyberbullying" and outlines the steps to be taken by someone who feels they have been the victim of bullying or harassment, as those terms are defined by the policy. A 2013 amendment to Florida law added provisions regarding cyberbullying such that the district may investigate and punish online bullying, even if it occurs off of school campus, so long as the bullying has a substantial connection and impact on the school environment. More detailed reviews of this policy can be found in Volume XIII, Issue 2, and Volume XIV, Issue 1 of *Legally Speaking*, available on www.pcsb.org by navigating to the "About Us" tab, clicking "Legal Services" and then "Legally Speaking Newsletter" on the right.

Policy 6320.01 – Non-Discrimination in Purchasing and Contracting

This policy prohibits discrimination against vendors and potential vendors in all areas of purchasing and contracting based upon race, color, creed or religion, sex, legal marital status, national origin, age, disability, sexual orientation or other factors which cannot lawfully be used as a basis for awarding contracts. The policy also provides a detailed complaint process for those vendors who believe they have experienced such discrimination. Lastly, the policy discusses procedures the district will use to encourage bidding for district projects by small businesses and businesses led by women and minorities.

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 discrimination or harassment on the basis of the protected characteristics discussed above, which are covered by those policies, or suspensions or expulsions, which have their own appeal procedures elsewhere in the Code of Student Conduct. Examples of complaints covered by this policy might 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 5517.01, Policy Against Bullying and Harassment.

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 included in the policies discussed above. There are separate procedures for complaints regarding district services or operations and those regarding employees. A complaint and investigation process is also described, including a right to an appeal to the superintendent or his designee if the complainant is not satisfied with the resolution of the matter.

* * *

There are numerous laws and policies that relate to discrimination and harassment, and some of them overlap. However, employees can avoid problems by understanding the basic rules and procedures for implementation. For more detailed assistance, please refer to your supervisor, the district Office of Equal Opportunity or the legal department. For example, while it is clear that sex discrimination is unlawful, the law in certain sub-areas, such as gender identity, is still evolving and any questions in these areas should be referred to the legal department for guidance based upon the current state of the law. ■

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Academic Freedom

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mal notice of discipline, he sued the school administrators claiming that their actions constituted retaliation in violation of his right to freedom of speech under the First Amendment. The lower court granted summary judgment in favor of the administrators finding that the pamphlet and Ivory Tower segments were distributed pursuant to his employment duties and therefore were not protected by the First Amendment. On appeal, the Ninth Circuit agreed that the speech was made as part of his official duties but found that Garcetti does not apply to academic speech. The Court reviewed the history of public employees' First Amendment rights noting that Garcetti had changed the law. Since Garcetti did not apply to a case involving academic freedom, the Court reasoned that the correct analysis involved the "Pickering balancing test" which is derived from the 1968 Supreme Court case of Pickering v. Board of Education. This test involves balancing the employee's right to comment on matters of public concern against the public employer's right to promote efficiency. Since the Demers case had been dismissed without applying the balancing test, the Ninth Circuit remanded the case back to the trial court.

It is unlikely that the holding of the Demers case, involving a university professor, will have any effect on the First Amendment rights of elementary and secondary school teachers. Several circuit courts have recognized that the concept of academic freedom does not apply in this context and accordingly, it is likely that the First Amendment rights of these teachers will continue to be governed by Garcetti. ■



None of us got where we are solely by pulling ourselves up by our bootstraps. We got here because somebody - a parent, a teacher, an Ivy League crony or a few nuns - bent down and helped us pick up our boots.

Thurgood Marshall

* * *

The end of law is not to abolish or restrain, but to preserve and enlarge freedom. For in all the states of created beings capable of law, where there is no law, there is no freedom.

John Locke

* * *

My parents didn't want to move to Florida, but they turned 60 and that's the law.

Jerry Seinfeld

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