

# Legally Speaking

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100% Student Success

### Mission

Educate and prepare each student for college, career and life.

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## Public Records - Part 1

By David Koperski, School Board Attorney

Issues regarding public records and their release remain prevalent and sometimes challenging for governmental bodies in our state, including our school district. In Florida, public records are governed by a state constitutional provision and a statute entitled the Public Records Act. These laws will be the topic of this article and a follow-up article in the next issue of *Legally Speaking* that will address some of the common exceptions from the public records rules. The Public Records Act is one of the laws informally known as Florida's "Sunshine Laws." The Sunshine Laws relate to the public's access to the workings of the various governments in the state – in other words, they shine some light on public business. The other Sunshine Law is known as the open meetings law, which requires that meetings of the various boards and commissions of each governmental body, such as our School Board, advertise and allow the public to attend their meetings.

The Public Records Act generally provides that "public records" held by a "public agency" must be accessible to anyone who asks, unless an exception exists somewhere else in the law. While this general concept seems simple enough, let us start with some definitions so we are clear about the terms we will be using. First, we should define the most important term –

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## Legal Department 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.

## SNAPshot

By David Koperski, School Board Attorney

This periodic feature of *Legally Speaking* summarizes new and amended School Board policies adopted since the last SNAPshot. All adopted 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 update, the Superintendent has recommended and the School Board has adopted several new and amended policies. The following is a brief description of some of the more significant ones.

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### **Public Records**

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“public record.” The law defines this as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software or other material, regardless of the physical form, characteristics or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” The Florida Supreme Court has expounded upon this definition by stating that it includes “all materials made or received in connection with official business which are used to perpetuate, communicate or formalize knowledge.” So, the vast majority of records we create or receive at work are public records, but not all are. The key question is whether the record was made or received as part of the official business of the district. For example, you may receive a birthday card at work from a friend, and you may even put it in your locker or your desk drawer, but it is not a public record – rather, it is a personal record not related to your work at the district.

Note that this definition is very broad and includes any format of a record, including electronic and digital records, in addition to hard copy paper records. Of course, to be covered by the Public Records Act, a record must first exist. So, for example, an oral conversation between you and a coworker about work is not subject to the law because no record was created; however, if you send your coworker an email or a handwritten note confirming the substance of your conversation, you have created a record subject to the law.

The second important term to define is “public agency.” The district is clearly a public agency, but the law also states that certain outside entities or people with whom we do business may also be subject to the Public Records Act. Specifically,

any outside entity or person who acts on behalf of the district must allow the public to access its records that relate to the services it provides to us. In addition, they must retain the records just as we would and train its employees on public records. We include a provision in our contracts with these outside contractors to ensure they understand and follow these rules.

As noted above, the primary obligation we have under the law is to allow the public access to the public records of the district. This access is accomplished by making a public records request, or “PRR” for short. In the district, PRRs made by the media are processed by the Office of Strategic Communications and PRRs made by any other person or group are processed by the School Board Attorney’s Office. Certain rules apply, such as our ability to charge a fee for the staff time needed to collect the records if the time will exceed fifteen minutes. In addition, by law, we cannot ask why the person is making the request. Lastly, we are obligated to immediately acknowledge the request and then respond fully within a reasonable amount of time, which will depend upon the breadth of the request.

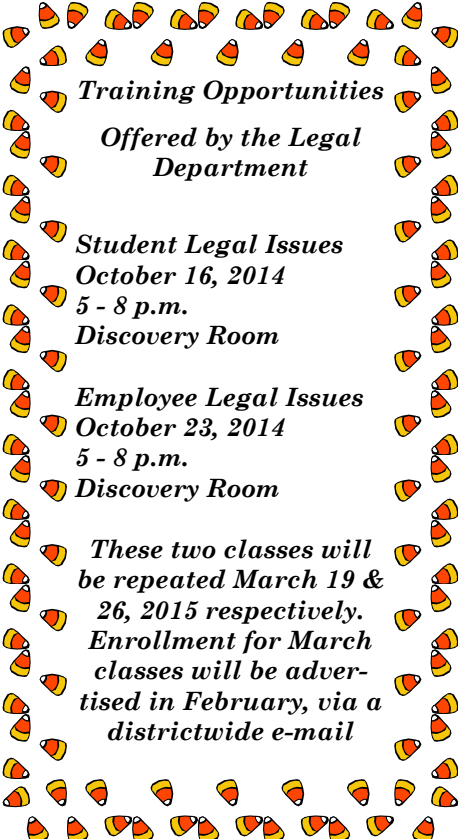
The School Board has adopted Policy 8310, *Public Records Examination and Inspection*, that further describes the rules relating to the processing of PRRs. You may view that policy, like any other School Board policy, on the district’s website by clicking the “District Bylaws and Policies” link under the “About Us” tab on the homepage.

One issue that arises when responding to PRRs is whether an exception applies to prevent the record from being released entirely or, alternatively, require us to redact (black out) certain portions of the record before releasing it. The law contains many exceptions that prevent the release of public records or certain information in them, such as medical information and social security numbers. Part II of this series

in the next issue of *Legally Speaking* will discuss this process of redaction and the common exceptions to releasing public records.

Another obligation we have under the law is to retain public records in accordance with district and state rules. Generally, the length of time we must retain public records depends upon the substance, and not the format, of the record. In addition, we are only required to keep one copy of the record. So, multiple copies of an email, for example, need not be retained. The district’s Records Management Department administers these rules.

As we perform our differing functions in the district, we should remain aware of the basic rules regarding public records. Should you receive a request for public records and have questions, please contact our office or the Office of Strategic Communications. ■



**Training Opportunities**  
Offered by the Legal Department

**Student Legal Issues**  
October 16, 2014  
5 - 8 p.m.  
Discovery Room

**Employee Legal Issues**  
October 23, 2014  
5 - 8 p.m.  
Discovery Room

**These two classes will be repeated March 19 & 26, 2015 respectively. Enrollment for March classes will be advertised in February, via a districtwide e-mail**

# 'Tis the Season - Political Campaigns

By Heather Wallace, Assistant School Board Attorney

School Board Policy 9700.01, *Advertising and Commercial Activities*, prevents the use of board property to advertise or otherwise promote the interests of any commercial, political or other non-school agency or individual organization, with certain exceptions that are enumerated in the policy. This would prevent the use of board property for a political campaign event on behalf of a particular candidate or to take a position on a political question (such as a proposed constitutional amendment), and it applies equally to oral speech and to the distribution of written materials, unless one of the exceptions enumerated in the policy applies.

The exception that would most likely apply in the case of political activities

would be one for activities that occur pursuant to a lease of board property. If the political activity is occurring under a lease, the activity is not considered to be school sponsored. In the absence of a lease or other exception, no employee or speaker from an outside agency should take a position on a political candidate, organization or question. This would prevent both speech and literature advocating for a candidate or advocating a position on a referendum or constitutional amendment.

The requirements for leasing board property for any purpose are contained in School Board Policy 7511, *Facility Leasing*. That policy should be reviewed carefully if a lease for a political purpose is being contemplated as the requirements of the lease



vary based on the type of political function. For example, a candidate forum can occur without a rental charge if it meets certain requirements enumerated in the policy, such as all candidates being invited. If you have any questions about such a lease. Please contact the legal department prior to entering in to any contracts. ■

**SNAPshot**  
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**Policy 2110, District Strategic Plan.** This policy was amended to revise the timeline for the School Board’s annual approval of the District Strategic Plan. It was also amended to emphasize that the Strategic Plan development and approval will coincide with the annual budget development and approval process so that all of the strategic plans and actions in the Strategic Plan will be supported by appropriate resource allocation in the annual budget. The School Board formally adopted the Strategic Plan on Sept. 9,

2014. The Strategic Plan is comprised of our Vision, Mission, Values, Strategic Directions and Action Goals. All employees should be familiar with the Strategic Plan and may view it on our website under the “Site Shortcuts” menu on the homepage, [www.pcsb.org](http://www.pcsb.org).

**Policy 2470, Education of English Language Learners.** This policy outlines the standards, assessments and timelines used for the education of ELL students. The policy was amended substantively to provide ELL students up to two years to meet grade appropriate performance levels and requirements. This change is supported by state law and was previously limited to one year. Other revisions were made to update the policy to current state standards and assessments.

**Policies 1215/3215/4215/7434, Tobacco and Nicotine Use,** and related **Policies 5500.08/5501.06 Code of Student Conduct for K-12 and Post Secondary.** These policies re-

late to the use of tobacco and nicotine products by staff and students on district property. The policies have always prohibited the use of smoke and smokeless tobacco and nicotine products on district property, but were amended to clarify that electronic cigarettes and related products, regardless of whether they contain nicotine, are also prohibited by staff, students, parents, vendors and any other visitor. Because tobacco and nicotine use is addressed in each of the several policies listed, each policy was amended accordingly.

**Policy 0169.1, Public Participation at Board Meetings.** This policy provides the rules and procedures for members of the public to speak at School Board meetings. The policy was amended several months ago to provide for better efficiencies at the meetings, to move the time for public speaking on certain topics closer to the time of School Board action on those topics, and to provide the pub-

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**PINELLAS COUNTY  
SCHOOL BOARD  
ATTORNEYS OFFICE**

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

**Legal Staff Members**

David Koperski, School Board Attorney  
Heather Wallace, Assistant School Board Attorney  
Laurie A. Dart, Staff Attorney  
Kerry Michelotti, Legal Secretary  
Barbara Anson, Legal Secretary  
Melanie Davis, Clerk Spec II - Newsletter Publisher

**Snapshot**

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lic access to speak at “special meetings,” which are sometimes called on short notice to allow the School Board to act on items that cannot wait until the next regularly scheduled meeting. At School Board meetings, members of the public may speak (i) about items specifically listed on the meeting agenda, (ii) about the general business of the district, that is not on the agenda and/or (iii) during any public hearing the School Board may be holding during the meeting, such as the budget hearing that was recently held to adopt the 2014-15 annual budget. These rights to speak exist at all regular and special meetings of the School Board. While no right to speak exists at workshop meetings where the School Board does not take action, as noted, the public would be able to speak at the subsequent regular or special meeting where the action will occur.

**Policies 5500, 5500.01, 5500.07, 5500.08 and 5500.09** (various **Code of Student Conduct** Policies). **Policies 5500 through 5500.13**, constitute the **K-12 Code of Student Conduct**, while **Policies 5501 - 5501.13**, constitute the **Post-secondary Code of Student Conduct** applicable to post-secondary students in the district, primarily at the various campuses of the Pinellas Technical College (formerly known as Pinellas Technical Education Center). The K-12 Code was amended to emphasize that student discipline will be administered in a reasonable, timely and fair manner that matches the severity of the misconduct, to clarify issues relating to custody concern and disputes by parents, to further define acts of students misconduct on school buses and to otherwise update the Code. ■

## Recent Court Decision Finds North Carolina’s Private School Voucher Program Unconstitutional

By Laurie Dart, Staff Attorney

**A** Superior Court Judge in Wake County, North Carolina issued an order on August 21, 2014 finding North Carolina’s voucher program unconstitutional. The program, known as Opportunity Scholarships, is designed to provide taxpayer funded vouchers to low income families to send their children to private or religious schools. In finding that the voucher program violates North Carolina’s constitution, the Judge reasoned that:

- a) It appropriates public funds to private schools in violation of the requirement that funds be used exclusively for maintaining a uniform system of free public schools;
- b) It appropriates public funds for unaccountable schools which do not accomplish a public purpose;
- c) It appropriates public funds outside the supervision and administration of the state board of education;
- d) It creates a non-uniform system of education;
- e) It fails to “guard and maintain” the right of the people by appropriating taxpayer funds to educational institutions that have no standards, curriculum or requirements for teachers and principals to be certified and diverting money from the public schools in favor of private schools; and
- g) It funds non-public schools that discriminate on account of religion.

The trial court decision has been appealed.

In Florida, a lawsuit has likewise been filed challenging the constitutionality of the voucher program known as the Tax Credit Scholarship Program. The basis of the constitutional challenge is twofold. The Plaintiffs argue that the program violates the requirement that public education be provided through a “uniform, efficient, safe, secure and high quality system of free public schools” under Article IX of Florida’s Constitution, and that it runs afoul of the prohibition against spending public funds “directly or indirectly in aid of any church, sect or religious denomination or in aid of any sectarian institution.” ■

Please send comments or suggestions for future articles to  
Melanie Davis @  
[davisme@pcsb.org](mailto:davisme@pcsb.org).

