

Legally Speaking

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ESE Refresher—Part 1

By Heather Wallace, Assistant School Board Attorney

As we start another school year, it is a good time to remind ourselves of our obligations with regard to students with disabilities. It is also wise to refresh our memories as to some best practices to remain in compliance with the law. One of the first requirements to keep in mind is Child Find. The district is required to identify all students with disabilities within Pinellas County. Therefore, if staff have any reason to suspect that a student may have a disability (i.e., struggling academically and not responding to interventions, struggling to behave appropriately, expressing difficulties fitting in to the school environment, etc.), staff should be engaging in the process to determine if that student is a student with a disability. If it is suspected by staff that a student has a disability, consent should be obtained from the parent to engage in evaluation. If a parent informs staff that the student has a disability, consent for evaluation should be obtained. If a parent suspects that the student has a disability and requests an evaluation to determine if the student is eligible for services, the district must either obtain consent within 30 calendar days and perform the evaluation or provide formal notification in writing refusing to perform the evaluation. If a parent requests evaluation, do not try to talk them out of it and do not tell them we must complete the RTI or MTSS process prior to evaluation. Move forward with the evaluation or, if staff believes that an evalua-

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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.

Conflicting Direction from Parents

By Laurie Dart, Staff Attorney

Every couple of years, we review the process to be followed when school personnel receive conflicting direction from parents regarding educational decisions such as enrollment of their child in a particular school or program, transportation, medical services, participation in academic events or early release from school. At the risk of being redundant, we thought a review at the beginning of the school year might be helpful.

School Board Policy 5500.01K (found on page 29 of the Code of Student Conduct) establishes a protocol to follow in such cases. It states:

In the event that the school receives conflicting direction from divorced or separated parents (including parents who were never married) concerning a stu-

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Nut and Bolts of Field Trips, Including Parental Participation

By David Koperski, School Board Attorney

Field trips provide a valuable educational and social opportunity for students. However, in order to protect all involved, schools must follow certain rules before and during a field trip. This article will summarize the major field trip rules in our district and highlight some recurring issues, such as the role of parents on the field trip. You may find all the rules in School Board Policy 2340 - *Field Trips and Other District-sponsored Trips*, Risk Management's *Field Trip Guide* and the Area Office's *Guide to Managing Schools*. You can find the School Board Policy Manual on the district's homepage under the "School Board" tab and then select "District Bylaws and Policies" on the left-hand menu.

The district defines field trips as those off-site student events that schools sponsor for the benefit of its students, usually during the school day, but sometimes outside of normal school hours or even overnight. Schools must provide for transportation to field trips occurring during the school day as the trip is considered an extension of the school day. The following significant rules apply to field trips and, while others exist in written policy and procedures, a teacher or principal looking to take a field trip should be primarily concerned with these rules.



First, the trip itself must be approved using the district's current forms. The Area 2 Office maintains a pre-approved list of hundreds of sites appropriate for field trips. Day trips to those sites must be approved by the school principal at least two weeks in advance. Trips to sites that are not on the pre-approved list, and all overnight field trips, must be approved by

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ESE Refresher

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tion is truly inappropriate, consult with district ESE staff regarding a formal refusal. Initial evaluations must be completed within 60 calendar days (rather than school days) of obtaining consent, with exceptions for school vacations and if the student is absent for more than eight days.

If a parent disagrees with an evaluation performed by the district, they have the right to request an Independent Educational Evaluation (IEE). If the district receives a request for an IEE, we must agree to perform the IEE or file due process to defend the district's evaluation. If you receive a request for an IEE from a parent, consult with district level ESE staff to determine the appropriate response.

The IDEA and Florida Administrative Code require certain participants for an IEP meeting, among them an ESE teacher and general education

teacher. We understand that this requires coverage in the classroom and is a disruption to the school day. However, it is required by law and a court may find a denial of FAPE if a proper IEP team is not present for a meeting. There are times where certain members of the IEP team may be excused by the parent. However, if the input of these staff members is needed, it is not appropriate to ask for them to be excused. Also, it is absolutely the right of the parent to refuse to excuse a team member, so it should not be assumed that any particular member of the team does not need to be present for the entire meeting, and appropriate coverage should be arranged.

Parents are a required member of the IEP team as well, and it is important to assure that they have every opportunity to participate. The first step to this is scheduling the meeting. Be sure to work with the parents to schedule the meeting at a time that works for them. If they are unable to make it to a scheduled

meeting, the meeting should be rescheduled rather than proceeding without them unless you are in a situation where the meeting has already been rescheduled more than once at their request. The next step in parental participation is seeking their input during the meeting. They should be given an opportunity to express concerns, make suggestions, etc. Suggestions made by the parent should be discussed by the team, but do not necessarily need to be incorporated into the IEP unless the team as a whole is in agreement.

No one member of the IEP team controls, whether it be the parent or a member of district staff. The only exceptions to this are decisions to place a student in an ESE center or on the Access Points curriculum, which require parental consent. Decisions by the team should be made based on data review and what the team feels is appropriate for that particular student, not what is standard in a particular program or school. ■

Parents
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dent, the school may rely on the direction of the parent identified by the following criteria, which are listed in order of priority:

First, the parent who is designated in a parenting plan or other Florida court order as having either educational decision-making authority or sole parental responsibility over the student; or

Second, if both parents are designated as educational decision-makers with shared parental responsibility, the parent who resides at the address specified in the parenting plan or other Florida court order as the address to be used for school assignment purposes; or

Third, if no such parenting plan or order exists or no such address is specified, the parent who resides at the address used by the district

for student assignment purposes, whether or not the student is attending their zoned school; or

Fourth, if the address on file with the district is not valid or otherwise relevant, the school may rely upon the direction of the parent who enrolled the student.

Typically, the most difficult scenario to sort out involves parents who have a court order providing for shared parental rights and responsibilities. This means that each parent has an equal right to make important decisions regarding their child’s education. It suggests that they will mutually agree on educational decisions but that is not always the case. When they do not agree and instead give conflicting direction to school staff, there needs to be a mechanism to make a decision on which direction to go. In the past, we would defer to the parent who had “custody” or was designated the “primary residential parent.” After 2008 when the Florida Legislature amended the law involving dissolu-



tion of marriage and eliminated these concepts, School Board Policy 5500.01K was amended. The policy essentially authorizes staff to honor the direction given by the parent who resides at the address “used for school assignment purposes.” If the parenting plan or court order does not specify which address is to be used for student assignment purposes, which is often the case, staff should determine where each of the parents live and which of their addresses was used to determine student assignment. We suggest that

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Field Trips
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the school’s principal and the area superintendent at least four weeks in advance and include a detailed itinerary of the trip. In addition, multi-day field trips must also be approved by the subject area supervisor.

Second, all students attending must first have a parent-signed field trip permission form on file, which should include a description of the transportation that will be used (see below regarding transportation). When planning your field trip, please use the Purchasing Department’s new Commercial Carrier Request Quote form.

Third, the field trip must have appropriate adult supervision through chaperones, whether district employees or parent or other adult volun-

teers. By policy, all trips must be conducted under the supervision of a certificated district employee. The chaperone ratio must be at least 1:10, or one adult chaperone (students cannot be chaperones) for every ten students, and may be more if the principal or area superintendent require more chaperones due to the nature of the field trip. Parents or other adults may act as chaperones so long as they are registered district volunteers. People interested in registering as a district volunteer may find more information and start the process through the district’s Office of Strategic Partnerships – see more information at www.pcsb.org/Page/459. However, the registration and background check process may take up to two weeks or more, so parents or other interested adults should ensure they start this process well in advance of a field trip for which they want to chaperone. Par-

ents who have not completed the volunteer process cannot act as chaperones on the field trip. Pursuant to School Board Policy 9180, volunteers who have unsupervised contact with students must be Level II screened. Also, all non-school board employees who are scheduled to attend overnight field trips as chaperones/drivers must be Level II screened. Lastly regarding supervision, overnight field trips must have an appropriate number of male and female chaperones to ensure the supervision of all students.

Fourth, any funds the school collects in connection with the field trip must be processed using the district rules for internal auditing, including using the school’s internal fund accounts. Relatedly, in the event the school collects a fee or charge for the field trip, such fee can only be used to

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the address used in FOCUS is a starting point for this inquiry because at some point, that address was provided by a parent when the student was assigned and enrolled in school. If the address in FOCUS is no longer valid because the parent moved, or is otherwise not relevant because, for example, the school is a county-wide magnet where the address was not used for student assignment purposes, then the policy directs that we defer to the parent that enrolled the student.

There are a variety of situations which may not fit neatly within the protocol established by this policy. For example, any student new to the district will be enrolled when a parent provides the documents required by School Board Policy 5112 – *Entrance Requirements*. Whether the other parent agrees with the enrollment decision is not something that the school staff is expected to know or address at that time. The district has an obligation to educate every child residing in Pinellas County and therefore, the child should be enrolled in accordance with the student assignment policy, and the conflicting direction of the parents can be sorted out later.

If you have questions regarding a specific situation at your school, please feel free to contact us for guidance in applying our policy. ■

Field Trips

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offset actual costs. Also, no student can be excluded from the field trip because of an inability to pay any fee or charge of the trip, or even any third party's admission fee or expense that the students incur during the trip. Schools may always conduct acceptable fund-raisers to offset field trip costs.

Fifth, because field trips, by their very nature, require travel, schools must ensure that appropriate transportation is used. The preferred mode of transportation is by school bus since school buses have a proven safety record and are less costly than hiring an outside company. Schools may contact the Transportation Department to inquire about the availability of a school bus for a field trip. When a school bus is not available, the next preference is to use a pre-approved commercial carrier, such as a private bus company. The Purchasing Department maintains a current list of companies that have been approved by the School Board following a public procurement process.

If a commercial carrier is not available, students may be transported in private vehicles to and from field trips if certain preconditions are met. These include obtaining the driver's registration, license and insurance information, as well as exhausting all efforts to obtain a school bus or other pre-approved carrier before considering private vehicles. Student drivers are discouraged, but may be allowed in exceptional cases if they are at least 17 years of age, have all of the documentation required of other drivers, have the express approval of the principal, all other avenues have been exhausted (including adult drivers of private vehicles) and the parents of all students driving or being driven have given written permission. In addition, student drivers should be limited to in-county travel, except as authorized by the principal and, again, the parents provide written permission for such exception.

Finally, there are several other field trip rules that often arise and deserve mention here. Field trips should not be made as a recreational trip to the beach or any other body of water. In addition, amusement rides should not be made available during field trips during the school day, except as approved by the principal. And, since a field trip is a school-related and school-sponsored activity, the students should be marked as present for the academic day and any staff members on the trip should complete the Temporary Duty Elsewhere (TDE) paperwork for their absence from the school site. Also, while many of these rules also apply to band, orchestra, non-athletic competitions and other similar trips, you should review the specific rules for those trips with the building administration and, if needed, area superintendents before scheduling. ■