

Legally Speaking

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First Amendment - Bullying Off Campus

By Laurie Dart, Staff Attorney

Earlier this year, the United States Supreme Court denied a petition seeking review of an appellate court decision upholding the ability of a school district to discipline a student for off-campus cyber speech. In so doing, the Supreme Court once again declined an opportunity to clarify an issue concerning a student's First Amendment right to freedom of speech on social media and a school district's authority to discipline a student for off-campus cyber speech. The case at issue is Bell v. Itawamba County School Board, 799 F.3d 379 (5th Cir. 2015) and involved a high school student in Itawamba County, Mississippi who posted a rap recording on Facebook and YouTube naming two teachers and containing at least four instances of threatening, harassing and intimidating language. Several appellate and lower court cases addressing cyber speech have applied the standard announced in the landmark 1969 Supreme Court case of Tinker v. Des Moines involving the First Amendment protection afforded to students protesting the Vietnam War by wearing black arm bands. In Tinker, the Court stated that students could not be disciplined absent a showing by the school administrators that the speech caused, or was reasonably likely to cause, a substantial disruption to the school environment. In Bell, the student and his family argued that the Tinker standard only applied to speech within the "schoolhouse

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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.

Politicking and the Schools

By David Koperski, School Board Attorney

As the political campaign season enters its height, we should all be reminded of certain rules regarding political activities on school grounds, whether they be conducted by candidates for elected public office or others on their behalf.

School Board Policy 9700.01, copied in full below, states the general rule that School Board property, including school sites, may not be used to promote the interests of, among other things, any political candidate, organization or position on a political question. Thus, no person, whether they are a candidate, employee, parent or other person, may engage in political activities on school grounds, including, among other things, (1) physically campaigning on school property, (2) using

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Student Records - Directory Information and Media Releases

By Heather Wallace, Assistant School Board Attorney

There are many situations in which district staff are requested to provide records or images of students, as well as events that occur that might inadvertently result in the release of student information. There are several things that we must keep in mind in these instances. First and foremost, the district has a general responsibility under the Family Educational Rights and Privacy Act (FERPA) to keep personally identifiable information regarding students confidential. This applies to all information regarding students, including records as well as images. Staff that have a legitimate educational interest in such information are allowed access to confidential student information. However, information should not be accessed without such legitimate educational interest and any information that staff has access to must be kept confidential.

There are certain circumstances in which the district is allowed to release personally identifiable information. This article will discuss two of those situations - Directory Information and Media Releases. Access to and release of confidential information not under appropriate circum-

stances can lead to discipline.

The most common release would be information that is considered Directory Information. With regard to Directory Information, you should familiarize yourself with the form that is on page 11 of the Code of Student Conduct (CSC). That form, which is based upon policy, limits Directory Information to the following: student's name, photograph (e.g. yearbook), 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 agency or institution attended, subsequent educational agency or institution attended and academic work used for publication or display. Directory Information can only be released if the parent has not returned the Directory Information Opt-Out Letter which is contained on page 11 of the CSC. It is important to note that parents have until September 15 or 30 days from receiving the CSC (whichever is earlier) in which to return the Opt-Out Letter to the school. So, Directory Information should not be released prior to that date in order

to give parents the opportunity to exercise their right to prevent that information from being released.

In addition to the exception of release of Directory Information for students whose parents have not opted out, the district provides a Media Release form which parents may sign if they wish to allow the release of their child's image, voice or name to the press or for the district's use on our own website or TV channel. This allows for the broadcasting and release of student information in the case of athletic events and other school events such as performances. If a parent has not signed a Media Release, photos, videos and the student's name should not be released to the media or for use on any websites, etc. When you are taking photos or videos, you must ensure that every child depicted has a Media Release on file. Even with this form, it is not appropriate to place photos, videos or names of students on anything other than a district sponsored website or social media account. Posting to a staff member's private website or social media account is not appropriate and may result in discipline. ■

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school resources or time to campaign, or (3) using school logos, photos or other property in campaign materials.

One exception to this general rule is when a group or person formally leases school facilities under our Facility Lease program administered by the district's Real Estate Department. With a lease, it is clear the speech is not school-sponsored, which is why we can lease our facilities to political candidates, churches and other groups we would not or could not legally endorse. The leasing policy,

School Board Policy 7511, contains additional rules that must be followed. Questions regarding leasing a school for any purpose should be referred to the Real Estate Department at 547-7137 or the following website: <http://pcsb.org/Page/3995>.

Corollaries to this general rule include two important concepts. First, employees may not spend any of their duty time or school resources (e.g., copiers) to promote a candidate or political cause. Not only does a specific Florida statute prohibit a candidate from doing this, but our School Board policies also prohibit it, and violations would likely lead to

employee discipline. Second, other than fund-raising that occurs at an event held pursuant to a lease agreement, no employee, candidate or other person may engage in fund-raising on School Board property. The Florida Secretary of State's office has made clear that this prohibition extends not only to the physical grounds of the schools, but also to solicitations, including invitations to fund-raisers, made by phone, e-mail, regular mail and fax to schools. Thus, if your school receives faxes, emails or mailers with campaign materials, you should dispose of them and not share them with anyone –

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otherwise, even unsolicited campaign materials could be viewed as being endorsed by the school if the school disperses them. If you continue to receive the same materials, you may contact us and we can assist in stopping the materials.

Sometimes, candidates for various elected offices request to visit schools. If a school receives such a request, we must apply certain rules, but they do give schools certain discretion. Of course, you may always contact our office at 588-6219 for advice. A school should treat a candidate's request to visit a school exactly the same way it has treated, or would treat, a request from any other member of the public, with the additional caveats regarding campaigning described below. School Board Policy 9150 essentially allows a principal to grant or deny visits from the public based upon disruption to the school. So, if a school has generally not allowed any public visitors, you can deny a candidate visitor, but if the school generally allows the public to visit, then the candidate should be allowed to visit. It may be that some schools only allow public visits during certain times of the year, such as before and during the application program timeframe, or only outside of the standardized testing windows.

Regarding campaigning caveats, any visiting candidate should be informed that s/he cannot engage in any political campaigning, advocacy, or literature distribution, whether active or passive. This prohibition would include: (1) wearing of shirts or buttons with their names, identification of the district or other seat/office number (e.g., "Florida House District #126"), or related information on it, (2) distributing campaign literature and (3) speaking to people, whether employees or not, regarding their candidacy. If any visiting candidate violates these rules, please remind him/her of them and ask for compliance. Continued violations should lead to a termination of the

visit and a notification to our office so that we can send a reminder of the rules. Lastly, any visiting candidate should be accompanied to ensure compliance with these caveats, but you are not required to provide any greater access to the school just because the visitor is a candidate.

The following are some points to summarize the above rules for candidate visits:

- Principals should treat candidates' requests to visit schools the same way they treat other requests from the public, with the caveats below.
- School Board Policy 9700.01 prohibits school property from being used to advance a political cause or candidacy.
- If a candidate visits, s/he should be advised of the following in advance of their visit:
 - Based upon the policy, the visitor may not use any attire, speech, literature or any other form of communication to promote their candidacy while on school property.
 - This prohibition includes, but is not limited to, clothing with names or other political messages, distributing literature and engaging in conversations with people regarding their candidacy or related matters.
 - If a candidate visits, s/he should be accompanied to ensure compliance with these caveats, but should be given no more nor less access than principals provide to other public visitors.

Please be vigilant to ensure our sites are not being used by anyone, whether a candidate, employee, parent or other, to promote a candidate or political position. If you have any questions or a situation arises involv-

ing these rules on which you need guidance, please feel free to contact me, Heather Wallace or Laurie Dart at 588-6219.

Policy 9700.01 – Advertising and Commercial Activities

School Board property shall not be used for advertising or otherwise promoting the interests of any commercial, political or other nonschool agency or individual organization; nor shall Board employees or students be employed in such a manner. The following are exceptions:

- A. School officials, with the Superintendent's approval, may cooperate with any governmental agency in promoting activities in the general public's interest or may cooperate in furthering the work of any non-profit community-wide social service agency; provided, that such cooperation does not restrict or interfere with the educational program of the school and is non-partisan and non-controversial.
- B. A school may use film or other educational materials which contain advertising. The film or material shall be carefully evaluated by the school principal for classroom use to determine whether the film or material has educational value.
- C. The Superintendent may announce or authorize to be announced any lecture or community activity of particular educational merit.
- D. Demonstrations of educational materials and equipment shall be permitted with the principal's approval.
- E. School publications may contain appropriate advertising to defray the costs of publications.

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- F. School groups may appear for school activities, civic programs and community benefit programs.
- G. To promote the recruitment and retention of teachers and other employees, information about special offers and discounts available to District staff for goods and services may be provided on the district's web site, with procedures established by the Superintendent.
- H. Schools and the district may utilize sports facilities for commercial advertising to support school programs. The principal or the District's Athletic Director, as appropriate, shall maintain approval rights on the content and form of such advertising. Money collected from these commercial advertisements shall be deposited into the proper internal account.
- I. Commercial activities may occur pursuant to lease of Board facilities under the terms of individual lease agreements and pursuant to Policy 7511. ■

First Amendment
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gate” and did not apply to speech created off campus on social media. Noting that “the pervasive and omnipresent nature of the Internet has obfuscated the on-campus/off-campus” analysis used in traditional school speech cases, the Fifth Circuit Court of Appeals nevertheless rejected the student’s argument that off-campus speech could not be sanctioned by school administrators. The Court stated that “Tinker governs our analysis ... when a student intentionally directs at the school community speech reasonably understood by school officials to threaten, harass and intimidate a teacher, even when such speech originated, and was disseminated, off-campus without the use of school resources.”

The Fall 2013 edition of *Legally Speaking* discussed the off-campus cyber bullying issue and the difficulty posed for administrators in determining when the “substantial disruption or interferences test” necessary to impose discipline for off campus speech has been met and cited two cases where the Third Circuit Court of Appeals found that the students’ MySpace postings, while offensive, were protected by the First Amendment. The United States Supreme Court was petitioned to review one of those cases but, like the Bell case, declined to do so. In a concurring opinion in Bell, one of the appellate court judges stated:

“Broader questions raised by off-campus speech will be left for another day. That day is coming soon, however, and this court or the higher one will need to provide clear guidance for students, teachers and school administrators that balances students’ First Amendment rights that Tinker rightly recognized with the vital need to foster a school environment conducive to learning. That task will not be easy in light of the pervasive use of social media among students and the disruptive effect on learning that such speech can have when it is directed at fellow students and educators.”

Stay tuned. ■

***“Morality is not properly the doctrine of how we may make ourselves happy,
but how we may make ourselves worthy of happiness.”***

-Immanuel Kant