

Legally Speaking

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100% Student Success

Mission

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

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Videos - Viewing and Copying for Parents and Others

By David Koperski, School Board Attorney

In our age of instant access to videos on smartphones, tablets and other devices, it should come as no surprise that parents, the press and others have increasingly asked for copies of videos in our possession, including videos from busses and school cafeterias. Many reasons exist for these requests, including a parent contesting student discipline, an attorney representing a person in a vehicle accident or school-based injury and the press running a story on a student fight. A few different laws affect these requests and this article will review these rules and how to best respond to these requests. However, in most cases, we reach the conclusion not to release copies of the videos unless we receive a subpoena or release it to a school or district partner so that they can perform their duties. In any event, we would be happy to work with you to analyze any request for copies of videos and provide guidance on the response.

When reviewing any request, we must first ask who is making the request. A parent request for a video showing their child is different than a reporter or other member of the public making a public records request for a video.



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.

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School Funding - Pennsylvania Supreme Court Reverses Prior Rulings

By Laurie Dart, Staff Attorney

In *William Penn School District v. Pennsylvania Department of Education*, the Pennsylvania Supreme Court recently overturned a lower court's ruling which dismissed a lawsuit brought by several school districts, individuals and groups with an interest in quality public education. The lawsuit alleged that Pennsylvania's school financing formula is unconstitutional because it violates the state constitution's Education Clause requiring the state to "provide for the maintenance and support of a thorough and efficient system of public education." According to the lawsuit, the ratio of local funds versus state funds results in untenable resource disparities between wealthier and poorer school districts.

This "adequacy" lawsuit was dismissed by the lower court in 2015 based on a long

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Videos*(Continued from page 1)***Parental Requests**

If a parent makes a request for a video showing their child – for example, a video of a fight between their child and another student – then the parent arguably has a right to view the video as part of their child’s student records. The law and our policy afford parents the right to, among other things, access their minor children’s student records. See the federal Family Educational Rights and Privacy Act (FERPA), Florida Statutes Section 1002.22, and School Board Policy 8330. However, while we often accommodate parents’ requests for copies of records, neither the law nor our policy requires copies be provided unless circumstances effectively prohibit a parent’s right to access (e.g., the father lives in Alaska without access to a computer).

In many cases, the video shows multiple students. This does not necessarily mean that the video is a student record of every student depicted. Rather, the video is only a student record of the students involved in the fight, injury or other unique event that is shown – in other words, the video is not a student record of mere bystanders or students walking down a hallway. If, however, the video is a student record of more than one student, then the confidentiality

of that record belongs to both families and federal law allows us to type a written document describing the event without using actual names, but rather “Student A” and “Student B” to maintain the confidentiality of all parties. This written document can then be provided to the parents requesting to view a video that is a student record of more than one student, along with a notation that their child is “Student B,” etc.

On the other hand, if a parent asks for a copy of a video that only shows their student (with or without mere bystanders), then you may choose to allow that parent to view the tape, but we do not recommend giving them a copy; again, there is no legal right to receive a copy absent extraordinary circumstances. If a parent truly needs a copy for legal purposes, they can send us a subpoena for the record and we will comply with that separate legal procedure.

Non-parent Requests

Separate rules apply to requests made by those not seeking videos of their children, whether they be reporters, members of the public or a parent who is seeking a video that does not show their child. None of these requests implicate FERPA or the other student records laws discussed above, but rather fall under the rules of public records requests. The law of public records was discussed at length in two separate

2014 *Legally Speaking* articles, see [Volume XV, Issues 1 and 2](#). In those articles, we discussed the general rule that all records we create or receive that relate to school district business, including videotapes, are public records; however, numerous exemptions exist to prevent those records from being released publicly.

One of the exemptions that prevents many records from being released publicly relates to our “security system plan” and its components. This exemption generally includes records that disclose details regarding our security systems and includes videos taken from our surveillance cameras. Thus, we respond to public records requests for videos by stating we cannot release them as they are confidential and exempt under this legal authority. As with parental requests discussed above, if a party needs a video for legal purposes, they can always send us a subpoena and it will be released pursuant to that legal procedure, which rises to a level above public records requests.

If you receive any request to view or copy a video, whether it is parent requesting to view their student on the tape or a public records request from a non-parent, we recommend you contact our office for further guidance. ■

Lawsuit Regarding HB 7069 – The Case Begins

By David Koperski, School Board Attorney

On October 19, 2017, the Pinellas County School Board and 12 other Florida school boards filed a lawsuit against the state to challenge certain provisions of House Bill (HB) 7069, a 274-page bill that was signed by the governor and became law on July 1, 2017. HB 7069 was a large bill that combined approximately 50 other bills that were previously introduced, some of which did not go through the

normal legislative committee processes during the legislative session.

The primary challenges will be based upon the Florida Constitution, which states that local school boards “operate, control and supervise” all public schools in their respective counties. It also requires that public education be uniform throughout the state – so, for example, there is a state-wide teacher certification pro-

gram and the same curriculum standards apply throughout the state. These and other provisions of law codify the long-standing principle of “home rule” authority of local school boards, which provides school boards with broad powers to act as they deem appropriate in the best interest of public education in their respective local areas. And, as we remember from our civics classes, a

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School Board Policy - The Law of Our Land

By David Koperski, School Board Attorney



In the trainings we periodically offer to staff, we sometimes start by giving the basic sources of law that apply to the school district and us as employees. They are the U.S. Constitution, federal statutes and regulations, and, at the state level, the Florida Constitution and state statutes and regulations. Of course, we also are guided by court rulings interpreting all of these. However, we also have another source of “law” that we must follow that we informally refer to as our “local law” – School Board policies. These policies provide another, more education-specific, source of rules that we and those we deal with must follow. They are akin to a city council’s or county’s ordinances. Policies are general statements applicable across the entire district. Conversely, school or department-specific procedures will not rise to the level of needing to become School Board policies.

All district employees should be aware that the School Board adopts policies that set rules for our work in the district, but few understand their exact application or how they are created. This article will provide both some practical information for using our policies as well as an overview of the policy adoption process.

Our entire School Board Policy Manual is accessible on our website, www.pcsb.org, by navigating under the “About Us” tab and selecting “District Bylaws and Policies.” There, you can choose to view the Manual in Word or pdf format. As you will see, the document is lengthy – over several hundred policies in total. However, it is divided into the following ten separate chapters based upon subject matter:

Chapter 0000 – Bylaws
Chapter 1000 – Administration

Chapter 2000 – Program
Chapter 3000 – Instructional Staff
Chapter 4000 – Support Staff
Chapter 5000 – Students
Chapter 6000 – Finances
Chapter 7000 – Property
Chapter 8000 – Operations
Chapter 9000 – Community Relations

So, if you were interested in reviewing policies relating to curricular matters, such as student progression from one grade to another, you should start by reviewing the table of policies in Chapter 2000. Likewise, transportation policies would be found in Chapter 8000 and budget policies in Chapter 6000. Chapters 1000, 3000, and 4000 contain the policies that relate to our three separate classifications of employees: administrators, teachers, and support staff, respectively. Thus, if you are a teacher and want, for example, to review our policy that governs what happens if you receive a summons for jury duty necessitating your absence during a school day, you would go to Chapter 3000 and find Policy 3235 (Jury/Witness Duty). Most of the policies in these three employee-related chapters are exactly the same, but you will find some different policies in each chapter due to the differences in the employment classifications.

School Board policies are adopted in accordance with a statutory process applicable to all public agencies. In short, each policy that is proposed to be adopted or amended must be placed on two separate School Board meeting agendas. This process is known as the “first reading” and “second reading” of the policy. At each meeting, the public has an opportunity to provide input to the School Board and Superintendent and some changes can be made between the two meetings, if needed. However, if the

policy is passed at the second reading, the process concludes and it becomes effective immediately. Once final, a policy cannot be changed without completing the entire process again.

Policies are added, deleted, or amended depending upon a variety of factors. First, new laws or regulations passed by federal or state authorities may impact our policies. For example, a new Florida law passed in 2017 requires a policy to be adopted to address religious expression in schools – that is being reviewed now and will eventually lead to a first and second reading of either a new policy or an amendment to an existing policy. Second, our district policy consultant makes recommendations regarding policy adoption and revision. Third, district staff, in the performance of their jobs, may notice that a policy should be changed to achieve better efficiencies or simply to be updated to reflect our current practices.

Policy recommendations should be brought to the attention of a site administrator, who should speak with their district-level supervisor. A process exists to vet policy recommendations to determine whether they will be sent through the School Board policy amendment process. Even if a policy recommendation from a staff member is not formally incorporated into School Board policy, it may become a site-based procedure or practice. ■

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School Funding

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line of Pennsylvania court decisions concluding that the adequacy of the state’s funding formula is “non-justiciable” because it is a political question appropriately decided by the legislature rather than a court. Following Plaintiff’s appeal, the Pennsylvania Supreme stated:

...[W]e reject Respondents’ and the lower courts’ artificially narrow account of how a court may go about reviewing Education Clause challenges. We do not take at face value Petitioners’ attempt to constitutionalize the standards of the day. But we agree with the broader proposition—long accepted by dozens of our sister courts—that it is feasible for a court to give meaning and force to the language of a constitutional mandate to furnish education of a specified quality, in this case “thorough and efficient,” without trammeling the legislature in derogation of the separation of powers. This, of course, does not suggest that Petitioners’ claims, or those of any future litigant, should or will prevail ... We hold merely that Petitioners’ claims cannot be dismissed as non-justiciable.

This reversal paves the way for the plaintiffs to continue their challenge to the way Pennsylvania finances public education. The ultimate decision may impact future Florida educational financing court cases ■

Lawsuit

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legislature cannot pass a law that conflicts with the Constitution.

Based upon these and other constitutional provisions, we and the other school boards are challenging the law as an unconstitutional legislative overreach into the authority of local school boards to run their own schools. The law, in many respects, transfers the authority and control of public education from the local school board level to the state level. We are challenging the law on six grounds: schools of hope, capital millage sharing, charter school standard contract, charter schools as an LEA, Title I usage and turnaround schools. You can review a summary of each of the grounds of challenge on our website here: <https://www.pcsb.org/Page/25246>. However, just by way of example, the schools of hope provision creates a new scheme of charter school creation whereby the Florida Department of Education can approve certain charter school operators, referred to as “hope operators.” Once these operators have state approval, they have the right to open a new charter school in any school district in the state. This process bypasses the local school board, which has no say in whether this particular operator or school is appropriate for its local district, or even competent to run a public school.

Our School Board voted to join this litigation after thorough consideration of the merits and alternatives that might avoid litigation. Even now, we are working on possible corrective legislation that may provide relief before a lengthy lawsuit would conclude. However, this legal action is necessary to protect our rights to run our schools in the best interest of the residents of Pinellas County in the event other avenues of resolution fail. We believe portions of this law are unconstitutional and this action only seeks to hold the state accountable under the law for its actions, just as we and others hold us accountable for ours. ■

