

Legally Speaking

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PINELLAS COUNTY SCHOOLS

Pinellas County Schools is an equal opportunity institution for education and employment.

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W elcome ...



... to the first issue of "Legally Speaking." The offices of the School Board Attorney, Staff Attorney, Professional Standards and Risk Management are initiating a periodic newsletter.

The purpose of the newsletter is to provide school system personnel useful information that will alert you to developments in the law, remind you of existing law and policy, answer frequently asked questions and help you maintain a safe learning and work environment.

Our goal is to help you avoid legal problems while you are performing your duties.

We are hopeful that this publication will be useful to you, and we would appreciate hearing your opinions. We also would appreciate any questions or topics you feel might be appropriate for publication. Initially our plan is to publish the newsletter at the beginning of each semester. **Please send your comments and questions to our e-mail address at:**
cartern@pinellas.k12.fl.us



Mission Statement

The mission of the School Board Attorney's Office is to provide the highest quality legal services to the Pinellas County School Board and district by ensuring timely and accurate legal advice and effective representation on all legal matters.

Student Sexual Harassment

By Jackie Spoto, Staff Attorney

I see London, I see France, I see Alison's underpants.

When I was in school, that was just an embarrassing rhyme. Today, however, teachers and administrators wonder if even the simplest words and actions constitute sexual harassment by students (they may) and whether such incidents will result in losing a lawsuit.

Individual incidents of sexual harassment do occur regularly -- boys make lewd comments to a girl, a girl pulls a boy's pants down in the hall, boys and girls both grab various body parts. Under **School Board Policies 8.24 and 8.241**, students are told to report harassment by other students to a teacher, assistant prin-

icipal or principal. Further, **Policy 8.24** gives a general description of what constitutes sexual harassment.

"So how do you lose a lawsuit? By doing nothing when harassment is reported."

So what do you do when a student reports an incident or incidents of harassment or you observe an incident yourself?

Continued on page 4

Office of Professional Standards

By Michael Bessette, OPS Administrator

The Office of Professional Standards (OPS) works to promote the highest level of professional conduct from the employees and volunteers of the Pinellas County School System ensuring compliance with policies, rules and procedures of the School Board; federal, state local laws, and other community values and standards.

OPS has the responsibility to investigate allegations of misconduct that are made against employees or volunteers of the district. Administrators, teachers, parents, students, law enforcement and the general public refer cases to our office.

Last school year our office handled 1,280 cases in 32 different categories. The majority of complaints

were in the areas of Misconduct in Office (274), Misuse of Corporal Punishment or Inappropriate Method of Discipline (196), Disparaging Remarks to or About Students (148), Failure to Correct Performance Deficiencies (137) and Failure to Comply with School Board Policy, State Law or Contractual Agreement (94). Please refer to **School Board Policy 8.25 (1)** Disciplinary Guidelines for Employees for a complete list of offenses and a range of consequences.

Another primary function of OPS is conducting background checks in conjunction with Campus Police, approving applications for hire and screening volunteers.

Our office is here to assist you in

dealing with employee or volunteer misconduct. Please contact any of the following if you have any questions or need assistance.

Jim Barker	Administrator 588-6471
Michael Bessette	Administrator 588-6470
Bob Franz	Campus Police Investigator 588-6469
Lisa Jones	Investigator Specialist 588-5183
Marsha Ward	Secretary 588-6472

In future issues we will provide you with hypothetical situations based on actual investigations that will help you avoid potential problems. We are hopeful that this will help maintain a high-performing workforce.

Risk Management

By Ted Pafundi, Director of Risk Management and Insurance

The Risk Management & Insurance Department's mission is to "establish collaborative and contractual partnerships which provide quality life work programs for employees and a safe learning environment for students while minimizing the district's risk and financial exposure."

We are the district's insurance department and more. We purchase

insurance to protect the district from losses, develop safety and loss control strategies to eliminate or minimize risk and partner with our claims administrator, School Board Attorney and outside counsel to respond to, defend and settle claims against the district.

"Risk management" is the responsibility of all employees: teachers, bus drivers, administrators and sup-

port staff. Our job is to help you create a safe learning and work environment for the tens of thousands of people who visit our campuses and facilities each and every day.

In this newsletter, we will provide you with real examples and proven strategies to assist you in your efforts. We will respond to the every day questions we receive and share with you ideas that have proven successful throughout the district. Watch for our column entitled "Risky Business" in future issues.

Certified Copies of Court Documents in Student Records

By Robin Tew, Supervisor, Records Management

In today's world of home computers and laser printers, it is all too easy for anybody to create official-looking "court documents." Therefore, last spring it was announced that only certified copies of court documents will be accepted in student records. Court documents include name change,

custody papers, restraining orders and other records of court actions.

"A photocopy provided by the parent is not acceptable."

Because of problems in implementing this procedure, it has been modified. Now a parent may provide a certified copy for the file or bring in a certified copy for school personnel to photocopy. A

photocopy provided by the parent is not acceptable. The school employee making the copy should attach a note stating that the photocopy was made at the school from a certified original. The note should be signed and dated.

What do you do when ...

By John W. Bowen School Board Attorney



We checked court records and found that the order provided by the father was forged.

... a divorced mother enrolls her child in your school. She gives you a copy of a court order showing that, while she and her ex-husband have shared parental responsibility of the child, the child resides with her. In other words, she is the residential parent. After the start of the second semester, the father shows up at school and provides you with a copy of a new court order dated yesterday giving him primary residential custody of the child. He wants to withdraw his child from school and take him with him now. What do you do?

render the child. At any rate, do not release the child. Call the mother and inform her that the father is attempting to withdraw the child. She may tell you to go ahead and release the child.

If the father really has been awarded primary residential custody of the child, what should happen is that he will obtain physical custody of the child in the manner described above and then bring the child to school, give the school a copy of the new court order and request that the records be changed to reflect that the father is now the custodial parent.

If the father in this case had shown up with a certified copy of a court order showing that he had **sole custody** of the child and wanted to take the child with him, a different response would be warranted. A change from shared parental responsibility to sole custody in the father is a drastic change indicating something serious has happened. Contact the director of operations or the attorney's office before taking any action. Do not release the child to anyone until you have done so.

Because the mother was the parent who enrolled the child in your school originally, you should not allow the father to take the child from school unless the enrollment card shows that the father has been authorized to remove the child. Just because he has what he claims to be a

"Anybody can type up what appears to be a valid court order and sign it."

A second issue is whether the court order that the father has provided is a real court order. Anybody can type what

valid court order does not change that. Court orders are not enforced in that manner. If the court has given him primary residential custody, he should pick up the child from the wife, not the school. If the wife is resisting him, he should get the sheriff to enforce the court order or go to the court and seek to hold her in contempt if she does not sur-

renders to be a valid court order and sign it. That is why school board policy requires a certified copy of any court order. We recently had a father provide a forged court order seeking access to his child's student records. The mother had provided the school with a copy of a court order cutting off his rights of access to the student records.

Unfortunately some divorced parents continue to fight each other and try to use the school as the battleground. Our policy attempts to keep the school out of the fight by providing that we answer to the custodial parent or the residential parent in the case of shared parental responsibility. If the non-custodial parent does not like that, then he or she should go back to court and force the custodial parent to change the student records to reflect the rights of the non-custodial parent.

If you have any questions concerning the validity or interpretation of a court order, do not hesitate to seek legal advice through the area office.

Dear John ...

Yes, we are going to have a "Dear John" column in each newsletter. Here we will answer most frequently asked questions that you send to us. The answers will be short and sweet so keep your questions short and sweet. For example ...

Q: I am a female teacher. A male co-worker has asked me to go out

with him on several occasions. I repeatedly have refused his invitations, but he continues to ask me out every time he sees me at work. He has also called me at my home. What should I do?

A: The male co-worker's actions could constitute sexual harassment. You should notify your administrator

regarding the situation. Your administrator is required to take appropriate action regarding your complaint. If you are not satisfied with the result, you should contact the Office of Equal Opportunity or Office of Professional Standards. See **School Board Policies 8.24, 8.241 and 8.25(1)(m).**



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Student Sexual Harassment ... continued from page 1

If the incident involved inappropriate touching, go immediately to your school SRO. For simple and least embarrassing one-time incidents, basic classroom correction or office discipline generally can address the problem. Remember that sexual harassment can constitute "serious misconduct" under our "Code of Student Conduct." Therefore, repeated or more serious incidents of harassment should be investigated and disciplined in the same manner as other serious misconduct. Don't ignore complaints, but don't over react.

So how do you lose a lawsuit? By doing nothing when harassment is reported.

**Cardinal Rule:
"Don't do nothing"**

The Supreme Court recently ruled in Davis v. Monroe

County Board of Education that school districts can be liable under Title IX if:

- 1) the school district acts with deliberate indifference to known acts of harassment, and
- 2) the harassment is so severe, pervasive, and objectively offensive that it effectively bars the victim's access to an educational opportunity or benefit.

So report incidents for investigation and, if there was harassment, take appropriate action. Always tell the victim that if he or she experiences further incidents of harassment to report those incidents so that they also can be investigated and addressed.

Send comments and questions for future issues to Nicole Carter, Paralegal, at:
cartern@pinellas.k12.fl.us

Practically Speaking

By James L. Scaggs, Assistant School Board Attorney

In each issue of "Legally Speaking," we will try to address practical legal problems that school staff members may face. These problems are based on actual experiences in the district.

Subpoenas

Two days before spring break a teacher received a Subpoena for deposition in a case in which the School Board is the defendant. The date the deposition was set happened to fall in the middle of spring break when she was looking forward to a well-earned vacation at

an out-of-state location. In order to comply with the subpoena, she would



have had to interrupt her vacation and return to Pinellas County. Naturally, she was disturbed that this might be forced upon her and looked for ways to avoid the inconvenience. What to do?

First and foremost, do not ignore the subpoena. Doing so may result in being held in contempt of court because a subpoena is an order to appear backed by the power of the court. Contact the school board attorney or staff attorney by going through your building administration and director of operations.

Many times a subpoena for deposition can be rescheduled at a more convenient time for the person being deposed. We can contact the attorneys involved and see if they will agree to reschedule it. If they

refuse, we can file a motion for a protective order. That will automatically cancel the deposition.

If your subpoena is to appear in a trial, rescheduling may not be an option because the trial has been set by the court. We may be able to find out if you are really needed or maybe schedule your appearance at a time certain to be more convenient for you.

If the case is one that does not involve the School Board and you are not being subpoenaed because of what you know as a result of your employment by the school district, we cannot help you as that is a private matter. Nevertheless, you can seek the same relief suggested above through your own attorney or by directly contacting the attorney who subpoenaed you.