

Legally Speaking

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We Lied!

Well, kind of. In the first issue of "Legally Speaking," we told you that our plan is to publish the newsletter at the beginning of each semester. That's twice a year. That is still our plan, but because of the positive feedback (we appreciate it very much) we requested our own recount (that seems to be the thing to do these days). We are now certifying that we will attempt to publish the newsletter four times a year.

Don't forget that copies of the current issue of "Legally Speaking" as well as past issues are available on PLACES and on the Intranet under "Attorney's Office."

This newsletter is written for all district personnel. Please assist us in distributing it to as many employees as possible and getting the news out about our publication.

We want to hear from you! Please send your comments, opinions 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.



PINELLAS COUNTY SCHOOLS

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

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Religion in the Classroom

By James L. Scaggs, Assistant School Board Attorney



A recent Supreme Court decision involving the Santa Fe Independent School District in Texas once again has moved to the forefront the issue of prayer and religion in public schools. In that case the Supreme Court

struck down a school board policy that authorized students to vote on whether to include an "invocation" at football games and to elect a student to deliver it. The court ruled the school board had endorsed organized public prayer at a school function thereby violating the First Amendment prohibition

against government established religion.

In dealing with religion, the First Amendment has two parts. The



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Office of Professional Standards

By James Barker, OPS Administrator

Most legal actions must be initiated within a certain time frame from the event that is the basis for the legal action. If the legal action is not begun within the required time frame, then the right to bring the action is lost. These limitations on bringing legal proceedings are found in state statutes and are commonly referred to as "statutes of limitations."

For example, if you are a party to a written contract and the other party breaches that contract today, you must file suit within five years from today or you will have lost the right to recover any monetary damages you may have suffered as a result of that breach of the contract. If you are injured in an automobile accident as a result of the other driver's negligence, the statute of limitations for a lawsuit based on negligence is four years. If someone slanders your good name, you must bring suit within two years.

There are also statutes of limitations for criminal prosecutions.

For more serious felonies (felonies of the first degree), prosecution must begin within four years after the crime was committed. For lesser felonies, the statute of limitations is three years. For misdemeanors (criminal charges with a maximum penalty of one-year incarceration), prosecution must begin within two years for first-degree misdemeanors and within one year for second-degree misdemeanors and noncriminal violations.

By now, you must be wondering what this has to do with public schools. Well, there are certain actions that do not have statutes of limitations. In criminal law, there are no statutes of limitations for the prosecution of a capital felony. **In school law, there is no statute of limitations for the prosecution of an employee for misconduct on the job.**

Remember, it is never too late to right a wrong.

For example, a male coach of a girl's high school sports team had an affair with one of his senior players. Nothing was reported until 15 years later when the woman, now married with two girls of her own, realized how wrong the coach's conduct had been. Not wanting to be responsible for leaving the coach in a position where he could continue to exploit children, the woman contacted the Office of Professional Standards and reported the affair that occurred 15 years earlier. The investigation turned up additional misconduct by the coach involving drug and alcohol use with students over a period of time from 10 to 15 years ago. Former students who were willing to testify included a prominent attorney and a deputy sheriff. When confronted with his distant past, the coach resigned.

Remember, it is never too late to right a wrong. Thanks to the courage of the former student, the employee who preyed on students is no longer in a position to harm any student.



Risky Business

By John Moore, Safety and Loss Prevention Specialist

It is all too common in today's society for disgruntled employees, parents of students and members of the public to take legal action against a school staff member or administrator for one reason or another. Some of these legal actions are based in fact, but most are proven to be merely unsupported allegations. The fact that they are unsupported allegations provides little comfort to you when it is your name that appears on the summons or complaint.

The school district maintains an insurance policy that serves to protect both you and the district in cases involving Educator's Professional Liability. Regardless of job title, if you are an employee of the district or even a student teacher or registered volunteer, you are covered while acting in the course and scope of your assigned duties. This policy provides coverage for you in cases such as employment practices allegations (discrimination or harassment charges) and educational errors and omissions (discrimination against students).

Not only may the policy cover judgments rendered against you personally, more importantly it may pay the cost of your legal defense, win or lose. As you probably are aware, legal defense costs easily can run into tens of thousands of dollars.

Even the most conscientious employee can make a mistake in judgment or be unjustly accused of a wrongful act. If the worst should occur some day, the Educator's Professional Liability Policy can provide you with financial and legal protection. Until that day comes, knowing the policy is in place may provide you with a little peace of mind.

Legal Factoid

By Jackie Spoto, Staff Attorney

In addition to the protections provided for you by the Educator's Professional Liability Policy described in the "Risky Business" column, all employees also are protected by the doctrine of sover-

eign immunity. In other words, you cannot be sued for your actions or your failure to act while operating in the scope of your employment unless you have "acted in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property." This means you still can be sued if you are a really "bad guy," but you are protected for simple carelessness or negligence.

The doctrine of sovereign immunity was designed to protect government from being sued. It originally was developed in England to protect the king from being sued by his subjects. It was based upon the theory that "the king can do no



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What do you do when ...

By John W. Bowen, School Board Attorney

... the city's police department requests a list of the students in your school with addresses to mail them information about athletic leagues the department is sponsoring during the summer. It is a good program designed to keep the kids active (and out of trouble) during the summer months. Can we help the police? The answer is "yes," but not by providing an address list.



scores, attendance data and discipline information. The definition of student records is so broad that it includes "any other evidence, knowledge, or information recorded in any medium" maintained and used by the district or a person acting for the district. In short, student records include any information about a student that the district has anywhere.

Under both state and federal law, as well as school board policy, all students have a right of privacy with respect to any educational records concerning the student maintained by the district. Only employees or volunteers who have a legitimate educational interest in the information contained in the student record in order to do their job should have access to student information.

In short, student records include any information about a student that the district has anywhere.

All employees and volunteers need to be mindful about a student's right to privacy concerning information about the student. A volunteer grading papers has access to the student's academic work completed and grades but should not share that information with others unless they need it to perform their duties within the district. A plant operator may know which students are serving in-school suspensions but should never tell anyone who has been suspended. Respecting the right of privacy of student records is everybody's responsibility.

When most people think of student records, they think in terms of the cumulative folder, but the term includes much more than that. It includes any and all official records, files and data directly related to students wherever that information is stored. It includes all personally identifiable information about a student such as the student's Social Security number, academic work completed, grades, standardized achievement test

Some types of information can be released as directory information. We notify parents of the beginning of each year in the "Code of Student Conduct"

that directory information can be released without the parent's consent unless they notify the district in writing that we cannot release such information. Directory information includes such information as the student's name, photograph, participation in sports and activities, and height and weight of athletic team members. Check the code for a complete listing of directory information.

Some school districts include addresses and telephone numbers as part of directory information. We do not include addresses and telephone numbers as directory information for a good reason. If they are included, then anyone could request a list of our students with addresses and telephone numbers and we would have to provide it. Parents easily can misinterpret that as providing a student address list for commercial exploitation. By not including addresses and telephone numbers in directory information, that information still is protected by the right of privacy.



So, how do we help the police department? Seek approval of distribution of brochures announcing the summer leagues pursuant to **School Board Policy 6.12**. The students get the beneficial information without violating the right of privacy with respect to their addresses.

Dear John ...

Q. We maintain sign-in logs for visitors and volunteers who are on campus. Recently we have found several parents who fail to sign in as required of others. What should we do?

A. Sign-in and sign-out logs are required under two separate school board policies. The first is found in **School Board Policy 4.01(1)(b)(18)**, which states that parents and visitors must sign in when they arrive on campus.

The second policy relates to volunteers under **School Board Policy 6.14 (5)(b)**, which requires volunteers to sign in and out while volunteering on school board property.

The principal of each school is specifically assigned the responsibility for insuring school board policies are followed at the school to which he or she is assigned. If a parent or other person fails to sign in or out, the principal may (and in the vast majority of cases should) make a verbal request for the person to follow the procedures of signing in at the front office. Following con-

tinued refusal or failure of the person to sign in, the principal should advise the person in writing that such continued actions will be considered trespassing and are disruptive of the orderly conduct of school. Thereafter, an appropriate complaint to law enforcement can be made.

If a principal needs assistance in this area, both the director of operations or the attorney's office are available to answer any questions.



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Religion in the Classroom ... continued from page 1



"establishment clause" prevents government from establishing a religion while the "free exercise clause" prohibits government from interfering with the practice of religion. What can be done in the classroom, on school grounds or at school functions without violating the First Amendment's establishment or free exercise clauses is a troubling question. This question is particularly pertinent at this time of year when we are headed into the holiday season.

Some educators may go overboard trying to avoid a violation of the First Amendment. We even have heard of the elimination of any religious songs from a holiday music program. Such actions are unnecessary. Courts have recognized that more than 75 percent of serious music is of a religious nature and have ruled that inclusion of Christmas carols in a public school holiday music program is not a violation of the establishment clause. However, music of other religions as well as secular songs should be mixed in with the carols to make the music program an educational experience in which students may learn about different religions and cultures.

The Supreme Court has not removed God from public schools as some have claimed. It merely has mandated that public schools not show hostility against religions but at the same time not show favoritism to any one religion or religion in general. The Supreme Court has not outlawed prayer in public schools; it only has ruled out school-sponsored prayer. As long as there are final exams in public schools, there will be prayer in public schools.

Next issue -- When may students pray at school?

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Send comments and questions for future issues to Nicole Carter, Paralegal, at cartern@pinellas.k12.fl.us.  
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**The legal Department, office of Professional Standards
and Risk Management**

wish you and your loved ones a

**Happy and Safe
Holiday Season.**



Legal Factoid ... continued from page 2

wrong." (My, how times have changed!) Our founding fathers incorporated the concept into our legal system so our citizens cannot sue government unless, of course, the government waives that protection.

Florida law does waive sovereign immunity and allows suits against the government based on negligence but limits recovery to \$100,000 in damages per

person or \$200,000 in damages per incident. That same statute creates the immunity for public employees subject to the exceptions noted in the first paragraph. Remember, however, that while you are protected from a lawsuit based on simple negligence, the school board is still responsible for damages caused by you up to the \$100,000/\$200,000 limits. Incidentally, the statute prohibits attorneys from charging an injured per-

son more than a 25 percent contingent fee for representing him or her against the government.

Volunteers also are entitled to that immunity **provided they are registered**. That is why it is extremely important to register all volunteers. Registration also provides them with workers' compensation protection should they be injured doing volunteer work.