

Legally Speaking

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Let Us Pray

By Jackie Spoto, Staff Attorney

In the last issue of *Legally Speaking* we promised to tell you when students may pray at school. As we noted, the Supreme Court has not outlawed prayer in public schools but only has outlawed school-sponsored prayer. Public school students still have the right to pray at school individually or in a group so long as it is not disruptive. For example, if a student wants to say grace before lunch, it would be a violation of the free exercise clause of the First Amendment for the school to interfere.

Likewise, if students want to participate in prayer activity known as "Meet Me at the Pole," they may do so as long as it is before or after school and does not interfere with school activities. If the students organizing that activity request that it be announced, the school should do so if it announces other student activities. To not announce the activity just because it is of a religious nature would be considered as unconstitutional hostility toward religion. On the other hand, it would be a violation of the establishment clause if the school announced the activity and encouraged students to participate.

Prayer before sporting events is not allowed if it is sponsored by or encouraged by the school. However, student-led prayer by team members before (or after) a game is common, and the school should not interfere with it or encourage participation. Coaches should never lead such prayers nor should they actively participate. A recent newspaper article indicated that some coaches have been reciting the Lord's Prayer with their football teams before games. Although the coaches said that participa-

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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 insuring 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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A New Assistant School Board Attorney

Last fall, Jim Scaggs, Assistant School Board Attorney, announced that he would be leaving our office. Jim was an experienced member of our team who helped us reach an amicable settlement in the district's desegregation case that had been pending since 1964. We enjoyed working with Jim, and he will be greatly missed.

Our new Assistant School Board Attorney is Tom Wittmer. Tom is a native of Pinellas County and graduated from Northeast High School. Tom served during the Vietnam War as an officer in the U.S. Navy. He graduated from the University of Florida School of Law, so we now have an all Gator legal department.

Tom was in private practice for six years and was Staff Attorney for the Alachua County school system for the past 15 years, where he dealt with a wide variety of school-related legal matters. Tom's background and experience will be an asset to our office. We welcome Tom to Pinellas County!

Cheating is a Crime

By Jim Barker, Administrator, Office of Professional Standards

Now that the season (statewide testing) is upon us, it is time to remind school personnel of the seriousness of violating testing procedures. In the past we have had some unfortunate incidents where teachers have inappropriately crossed the line on helping students prepare for and take statewide tests. When that happens, the school district's response is necessarily severe. The integrity of the school district and the citizenry's confidence in it is at stake. Students must learn that cheating is considered a most serious matter.

Most forms of cheating are blatant while other forms are subtle. One method of cheating would be for a teacher to

teach his students the exact test questions and answers to prepare students for the test. Another method would be for a teacher to read the answers being recorded by students, point to wrong answers and suggest that the student rethink those answers. A teacher could also cheat by tapping on a portion of a question as a method to help the student on the test. For example, if a question asked a student to add numbers, a teacher might cheat by tapping on the word "add." To their credit, it has been our experience that it is the students and their parents who report test cheating.

The seriousness of cheating on statewide tests is illustrated not only by the fact that the school district considers it a firing offense, but also by the fact that

the Legislature has made it a criminal offense. Section 228.301, Florida Statutes (1999) makes cheating on state-mandated tests a misdemeanor of the first degree, punishable by a fine of not more than \$1000 or imprisonment for not more than 90 days, or both. That section even makes failing to follow test administration directions a violation.



The test security procedures of each test should be reviewed in detail before administering statewide tests. Do not assume that the procedures are the same as the year before as there may be significant changes. If you have any questions do not hesitate to contact your testing coordinator.

What Is in a Name??

By Robin Tew, Supervisor, Records Management

In the registration process, parents sometimes ask to have student records show a different name than is on their child's birth certificate. According to both School Board policy and the rules of the State Board of

Education, all students must be registered under their legal names. This is the name that appears on the birth certificate, or on a certified copy of a court order that judicially changes a child's name.

The provisions of Rule 6A-1.0955, Education Records of Pupils and Adult

... all students must be registered under their legal names.

Students, require the use of a student's "full legal name." **School Board Policy 4.15, LEGAL NAME ON STUDENT RECORDS**, provides that "... only the legal name of a student shall be placed on the official student record." A student may be addressed by another name at the parents' request.



Risky Business

By John Moore, Safety and Loss Prevention Specialist

A ceiling tile falls in a classroom, and a student is injured.

An angry parent wants to know who is going to pay the medical bills. It was our classroom and our ceiling tile; I guess it was our fault and we should pay, right? Or have you jumped to the same conclusion that the parent has?

The tort (a civil wrong) of negligence is based on four elements that are sometimes simplified into the following phrase for memorization purposes: **Breached Duty Caused Damages.** Negligence explained in its most basic form means that we had a duty to the injured party, we breached that duty,

and that breach was the proximate (direct) cause of the injury.

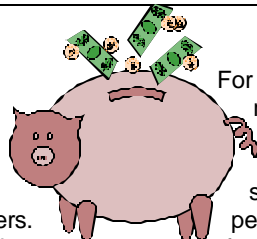
In this case, we certainly had a duty to provide a safe classroom, and the medical bills are the damages, so we only need to look at the remaining two elements: **B** and **C**. Did we **breach** our duty and did that breach **cause** the injury? The answer is not a simple one. Did we know the ceiling tile was defective? Did we buy substandard ceiling

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Fund Raising

By Patricia Riggs, Director, Auditing and Property Records

Most schools conduct fund-raisers. Fund-raisers may include school carnivals, book fairs, car washes, T-shirt sales and paper drives. Note: raffles and other activities of chance are not allowed.



For all types of school fund-raisers, there are some basic steps that have to be followed in order to have a successful event. First, the person or group initiating the fund-raiser must obtain the principal's approval, which is done by completing a "Request for Activity" form. Some of the information that

needs to be included on the "Request for Activity" form is the name of the group or organization initiating the activity, the type or description of the fundraiser e.g. cushion sale, candy-grams and the stated purpose for the funds raised.

In addition to the "Request for Activity" form, other forms are required and must

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What do you do when ...

By John W. Bowen, School Board Attorney

... a person calls your school and claims to be the father of William Jones, Jr., a student at your school. The caller states that he lives in Texas and his ex-wife has taken his son and he believes that she has moved to Pinellas County and enrolled him in your school. He says that he is familiar with the federal law that gives him a right of access to his son's school records. He demands that you fax him a copy of his son's records showing his address.

The caller is correct about federal law giving parents a right of access to student records. The Family Educational Rights and Privacy Act (FERPA), also known as the Buckley Amendments, enacted in 1974, gives parents of public school students not only the right of access to records on their child but also gives them a right to challenge the accuracy of those records and a right of privacy with respect to the records. The Florida Legislature passed a

The voice on the phone could be anybody. Without proof of the caller's identity we should not provide any information about a student in the school, including whether or not he is enrolled.

similar law in 1977. That does not mean, however, that we have to fax the caller a copy of his son's records.

First of all, we have no way of knowing if he is in fact the student's father. The voice on the phone could be anybody. Without proof of the caller's identity we should not provide any information about a student in the school, including information about whether or not he is enrolled. Ask the caller to mail an affidavit attesting to the fact is that he is the father of William Jones, Jr.. He should include a photo ID with the affidavit and a certified copy of any court documents identifying him as the father. Request that the caller include a self-addressed stamped envelope to an address identified in the affidavit as the caller's address. In the alternative, the caller can show up with the required proof but he runs the risk of the child not being a stu-



dent at the school.

After talking with the caller, check the child's clinic card to see if there is any information about the child's father. Also check the cumulative folder to see if the birth certificate identifies the father or perhaps there are some court documents that the mother provided that will identify the father. Finally, call the mother and advise her that a caller identifying himself as William Jones Sr. is demanding a copy of her son's records. She may confirm that he is indeed the father but request that we not allow him access to the records. We cannot comply with that request unless she provides us with a certified copy of a court order that specifically restricts the father's right of access to student records.

We can inform the mother that we have 30 days to provide the father with the requested information. She can take whatever actions she deems necessary to protect her and her child's safety in the meantime.

Dear John ...



Q: What should an employee do if he or she suspects that a student has a gun at school?

A: Unfortunately, this is one of the most serious situations that we face in public education today. **Under no circumstances should you approach the student.** Contact your building administrator immediately and inform him or her why you suspect that the student has a gun. Observing a suspicious bulge in the student's pocket or being told by another student about the gun can be the basis of "reasonable suspicion" that will justify a legal search in a public school setting.

The administrator should immediately contact the school resource officer or local law enforcement agency. The search at school should always be conducted by a law enforcement officer. They are trained on how to conduct a search of an armed suspect. Do not risk injury or death to yourself or others by trying to conduct the search yourself. Normally, law enforcement must have "probable cause" to conduct a search, but when responding to a request by school officials to conduct a search at school based upon "reasonable suspicion", the officer may proceed with the search. Florida courts encourage school officials to involve law enforcement by upholding

these searches based on "reasonable suspicion" when asked by the school officials to perform such a search.

????????????????????????????????

Did you know ...

... the school district's police department has five trained K-9 units that can detect concealed guns, drugs, and bombs? When these dogs are used and they alert on a student, that is not considered a "search." The alert gives reasonable suspicion to perform a search.

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please send comments or article suggestions for future issues to Nicole Carter, paralegal, at cartern@pinellas.k12.fl.us

Let Us Pray (Continued from page 1)

tion was voluntary, that is still a clear violation of the establishment clause of the First Amendment.

While employees have a right to practice their own religion, they should remember that while on duty they represent the district, and their actions are deemed to be actions by the district. If an employee is encouraging or leading student prayer, it is the same as if the school district were doing so and is a constitutional violation.

Remember, student prayer at school that is nondisruptive is constitutional; school-sponsored prayer is not.



Risky Business (Continued from page 2)

tiles in the first place? Was the tile wet from a leak in the roof and we ignored replacement of the tile? Did our maintenance staff carelessly leave the tile askew? If any of these questions are answered yes, we have breached our duty to provide a safe classroom and if that caused the tile to fall, we have been negligent.

On the other hand, the damages could have been caused by someone other than a district employee. Perhaps we had hired an insulation contractor who left the tile in a hazardous condition. Had the tile manufacturer knowingly put a defective tile on the market? Was the child horse-playing with the tile at the time it fell? Under these circumstances, the district may not be responsible for damages.

From this scenario you can see the question of negligence is not a simple one. It is one that may ultimately be decided by a jury based upon the testimony in a courtroom. When an accident occurs it is always best to call Risk Management (588-6136) for advice. Together we can ascertain the facts, evaluate the risks and provide the parent with a justifiable answer (that can be defended in court).

Fund Raising (Continued from page 2)

be completed and submitted to the principal at the conclusion of the fund-raiser, depending upon the type of the fundraiser. If the fund-raiser involves ticket sales, then a "Ticket Sales Report" and a "Ticket Inventory" form will be required. If the fund-raiser involves the sale of products, then the sponsor needs to complete the "Sales Report"

form, which documents all the financial information of the fund-raiser such as the total cost of items purchased, number of items available for sale, and the selling price of each item. The sponsor of the fund-raiser is to certify on the "Sales Report" the reason for any difference between the total possible sales and the actual total receipts recorded. **Remember:** failure to realize a profit does not eliminate the necessity of a completed "Sales Report."

For further assistance, see Chapters 3,

7, 11 and 12 in the Auditing & Property Records Department Procedures Handbook on the Intranet, which provides additional information regarding fund-raisers and for copies of the forms mentioned above. In addition, questions regarding fund-raisers may be directed to the Auditing Department by e-mail: Pat at riggs@pinellas.k12.fl.us or Rene at townesr@pinellas.k12.fl.us. With all that in mind, have a **successful and profitable fund-raiser!**