

Legally Speaking

Volume 1, Issue 4

School Year End 2001

Inside this issue:

Discarding confidential information	2
Risky Business	2
What Do You Do When ...	3
Dear John	3

Use (AND misuse) of school district computers

By Jackie Spoto, Staff Attorney



I will not give you a belabored introduction about how computers have changed the workplace. I want to get straight to the issues of what employees can and cannot do with their school board-owned computers, the district email system and its other computer resources and what laws and policies relate to these issues.

First, can there be any personal use of school board computers? Yes, but it should be a limited and minimal use (if I were charging a client for this, I would use the term *de minimus* to sound more like a lawyer). When using the district's computer resources, always keep in mind that those resources are there to assist employees in the performance of their jobs. Therefore, any incidental personal use should not interfere with the performance of the employee's duties or consume a significant amount of district computing resources.

The district does have e-mail guidelines that can be accessed on the PCS Intranet. There are two particular guidelines that I would like to emphasize: 1) Chain letters should not be sent via district e-mail and 2) The district e-mail should not be used for voicing personal viewpoints

(Continued on page 4)



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.

School Board Members

Thomas C. Todd
Chairman

Nancy N. Bostock
Vice Chairman

Lee Benjamin
Carol J. Cook
Jane Gallucci
Max R. Gessner, Ph.D.
Linda S. Lerner

J. Howard Hinesley, Ed.D.
Superintendent

Vox Populi Vox Dei

By Tom Wittmer, Assistant School Board Attorney

We have discussed questions about religious expression in the public schools in recent issues of *Legally Speaking*. In **Issue 2** we explained the First Amendment as it applies to invocations at football games and holiday music programs. **Issue 3** also included the topic of reli-

gious expression by students and the role of employees as representatives of the district. At this time of year, graduation presents yet another forum where religious expression may be an issue.

Many people want to include in the ceremonies a farewell sermon or

"baccalaureate" for the graduating class. School-sponsored or school-encouraged prayers of invocation or a benediction, which were for a long time traditional at school graduation ceremonies, have been held to violate the Establishment Clause

(Continued on page 4)

Discarding Confidential Information

By Robin Tew, Supervisor, Records Management

While many school district records are open to public inspection, student records and certain personnel information are not. Student records are confidential under the Family Educational Rights and Privacy Act and Florida Statutes. A limited amount of information contained in a public employee's personnel file is protected from disclosure under Florida Statutes.

It is important to protect the confidentiality of these records by limiting access and by not discussing their content with persons not authorized to access them. But that is not enough.

We also have to ensure that, upon receiving permission to discard these records from the Florida Bureau of Archives and Records Management, they are disposed of in a manner that protects their confidentiality.

Never just throw out confidential records. Wastebaskets and dumpsters are not secure. Anyone can go

through the trash. One local TV station actually went "dumpster diving" and retrieved confidential juvenile justice records from the courthouse trash and did a news story on it. Months later the station did a follow-up "diving" story only to find that confidential records still were available in the courthouse dumpster.

We also have to ensure that, upon receiving permission to discard these records ..., they are disposed of in a manner that protects their confidentiality.

To avoid such embarrassment (not to mention the violation of state and federal law), confidential information must be destroyed in the disposal process. Putting confidential records in a recycle bin is not appropriate. In the recycling process, we have no control over who handles the records. For hard copy records, shredding is an effective disposal process. It is also appropriate for film and tape. Only-heavy duty industrial shredders successfully can shred CDs. However, you should always check the user's manual before putting anything other than paper in a shredder. Never try to break CD's. They can

splinter and cause injuries. While cutting a CD with scissors might seem sufficient, cut CD's can be glued together and some information successfully retrieved.

Central Records sends records to the county incinerator semi-annually. All inactive records stored by Central Records are incinerated when eligible for discard. If you don't have access to a shredder, have a large volume of records to destroy or have records such as CDs that cannot easily be shredded, incineration is an acceptable alternative.

For more information about determining when records can be legally discarded and sending records for incineration, contact Central Records at 462-1550.



Risky Business

By Ted Pafundi, Director Risk Management and Insurance

Workers' compensation is a legally mandated employee benefit established by Florida law. The law covers all injuries and occupational diseases arising out of and in the course and scope of employment. It also covers death. The law does not cover mental or nervous conditions or injury caused primarily by substance abuse or an employee's willful intent to injure himself.

An employee who suffers an on-the-job injury or illness must seek treatment through the board's designated Managed Care Arrangement (MCA), which is the network of physicians

from which treatment may be obtained. A list of providers is available at each work site. The worker's compensation program is the sole remedy for job-related illnesses or injuries, so employees should not seek treatment from their health plan provider.

In case of a serious emergency or life-threatening injury, an employee may go to the nearest emergency facility and have his supervisor report the injury. In all other cases, an employee must report the injury to his supervisor and complete the Workers' Compensation Claim Worksheet. The supervisor or designee will telephonically report the injury to our workers' compensation carrier. If medical treat-

ment is required, the employee must select a provider from the approved list of workers' compensation providers. The supervisor contacts the provider to schedule the appointment.

The Bureau of Workers' Compensation Fraud is responsible for compensation fraud. If you suspect fraud you may contact the bureau at 800-378-0445 or call Risk Management at 588-6196. Workers' compensation fraud hurts all of us. Employees found guilty of workers' compensation fraud will be subject to disciplinary action up to and including dismissal.

The Risk Management & Insurance Department is committed to providing employees with the highest quality of care and to assist them in a speedy recovery and an early and successful return to work.

W hat do you do when ...

By Jackie Spoto, Staff Attorney

... your school has an office full of unclaimed lost-and-found student items.

Like most people, I have "permanently misplaced" some favorite things over my lifetime. I still would love to find the pretty opal earrings I lost in junior high, and the wonderful warm cashmere cardigan I lost somewhere along the way in college. If I knew that I lost them at a particular establishment (e.g., the mall), I would most certainly have gone to try and claim them at the lost-and-found.

Many of our students lose items (other than their homework) at school on a daily basis. Every school has a steady supply of clothes, toys, small electronics and miscellaneous other items that have become

separated from their owners. As a best practice, schools should take steps to safe keep and return these items, and if they remain unclaimed, find them new

What should not be done with these items? Employees should not become the new owners of lost items nor should they be given to other students as a prize or reward.

owners in a responsible manner. However, remember that **confiscated items should be handled in a different manner because school employees are responsible to ensure that confiscated items are returned to their rightful owners.** (See future article in *Legally Speaking*).

We have three suggestions for handling "found" items. First, items that have some value (e.g. a CD player) should be placed in a secure area.

Additionally students should be regularly reminded that lost items can be found in the school office. Third, lost items should be maintained for at least 30 days waiting to be claimed by their owners.

So how should we finally dispose of unclaimed items? There are several options. If there are items that can be used by the school, it is acceptable for the school to use them.

Sweaters and shirts can be kept in the office to use for students who are sick in the clinic area or come to school inappropriately dressed or any of the many reasons a student may need clothing. If you think it would be best for a particular student to keep that piece of clothing permanently, that is okay. It is also okay for the school to keep games or toys that its students could use while at school.

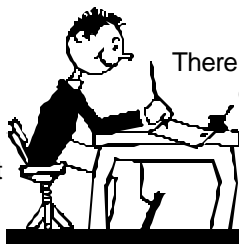
Unclaimed items that the school cannot use should be given to a charitable organization. The school would do well to make and keep a general inventory of these items.

What should not be done with these items? Employees should not become the new owners of lost items nor should they be given to other students as a prize or reward. Although, like most people, I have occasionally had the luck to become the new owner of a lost item (I am still amazed no one ever tried to claim a suede jacket left at a party at my house years ago), it is not appropriate for school employees to convert these items lost at school for their personal use.

Dear John ...

Q: I know that students cannot bring weapons to school, but what about employees?

A: Employees are prohibited by both Florida criminal law and Pinellas County School Board Policy from bringing weapons to school. Under §790.115, Florida Statutes (2000), it is generally a felony for anyone to possess or exhibit weapons on or within 1,000 feet of school property. The term weapon is broadly defined to include firearms, knives, razor blades, box cutters and a number of other dangerous implements. **School Board Policy 8.22, Weapons**, also prohibits employees from having weapons on school board property.



There are only two real circumstances under which an employee is allowed to have a weapon: 1) when "authorized by the duties of an employee" or 2) "as approved by the principal for classroom exhibit." When "authorized by the duties of an employee," the authorization should be fairly specific. Campus Police are the only employees authorized to have firearms. An American history teacher is not "authorized by the duties of an employee" to have a Civil War firearm in the classroom.

In the circumstance when a principal is asked to approve a weapon for classroom exhibit, the principal should consider the level of educational benefit

derived from having an actual weapon in the classroom (as opposed to using pictures), the circumstances under which the school can provide for security while such a weapon is on campus, and the general effect the presence of the weapon involved will have on the student body. I would also suggest consulting with your SRO or campus police concerning the request.

please send
comments or
article sug-
gestions for
future issues to
Melanie Davis at
davisme@pinellas.k12.
fl.us



**PINELLAS COUNTY
SCHOOL BOARD
ATTORNEY'S OFFICE**

301 Fourth St. SW
Largo, FL 33770

Phone: 727-588-6220
Fax: 727-588-6514
E-mail: davisme@pinellas.k12.fl.us

Legal Staff Members

John W. Bowen — School Board Attorney

Thomas L. Wittmer — Assistant School
Board Attorney

Suzanne Cortina — Legal Secretary

Melanie Davis — Receptionist/
Bookkeeper

Jackie M. Spoto — Staff Attorney

Diane Luisi — Legal Secretary

Vox Populi Vox Dei (Continued
from page 1)

of the United States Constitution.

The school's graduation ceremony, like all other school activities, must be neutral with respect to religion. "Neutral" does not mean that the school is hostile to religion; rather, it means that the school officials by their actions neither advance nor inhibit religion in general or any particular religion. A "baccalaureate ceremony" is by definition a religious ceremony, and for that reason it cannot be the school's graduation event. Even a non-denominational baccalaureate service is still a religious service, and should not be sponsored by a public school.

A religious organization such as a church or synagogue may, of course, hold a baccalaureate ceremony to honor graduating seniors. Such an event would normally take place at the organization's site at a time when it does not interfere with the school's ceremony. The school can announce such a baccalaureate ceremony in the same way as it announces other non-school student events that are sponsored by non-profit organizations.

Computer Use (and Misuse) (Continued from page 1)

(including religious or political viewpoints) or conducting personal business.

Another matter for employees to be aware of is that they should not load unauthorized software or software not related to work onto their computers. For example, an employee should not load games or their personal internet access software (such as AOL or the like) onto their work computers.

Misuse of district e-mail or computers implicates several disciplinary policies. Under **Policy 8.25, *Disciplinary Guidelines for Employees***, depending upon the type of misuse involved, the following offenses may occur:

- (k) Using Position for Personal Gain;
- (v) Misconduct or Misconduct in Office;
- (w) Unauthorized Use, Theft or Vandalism of School Board Property; and
- (x) Failure to Comply with School Board Policy, State Law or Appropriate Contractual Agreement.

Of course, a variety of other infractions also can involve computer use — harassment and discrimination (**8.25(l)** and (**m)**); inappropriate relations with students or colleagues (**8.25(o)** and (**p)**); breach of student or other confidentiality; violation of copyright; and criminal activity including pornography and gambling (**8.25(a)**, (**c)** and (**d)**).

Another reason for employees not to use District email for their personal matters is Florida's Public Records Act. The question exists as to whether personal e-mails sent or stored on e-mail systems or computers owned by state or local government become public records. The City of Clearwater and *The St. Petersburg Times* currently are litigating just such an issue. Further, any personal material sent, received or stored on computer resources may be subject to the public records laws. Employees should be aware that they do not have an expectation of privacy in anything they create, store, send or receive on their computers. Government has a right to access anything on a computer it owns.

Here are some suggestions to stay out of trouble. If you want to maintain ongoing e-mail correspondence with friends, have jokes forwarded to you and be able to forward jokes, receive travel-site bargain alerts and other personal matters, then you need to obtain your own personal e-mail account at home rather than use your district email address. Additionally, do not access, store or place anything not related to work on your work computer that would embarrass you or get you in trouble if someone else became aware of it. Never go into chat rooms using district computer resources.

Remember, computers have very good memories, even of deleted items, and the district has the right and ability to monitor computer use. Also, keep in mind that most employees have a limited amount of break time per day during which they may conduct personal business, and that would include any incidental personal use of the computer during the day.

The question of the constitutionality of graduation prayers or religious messages that are initiated and given by students themselves, instead of by school officials, is the subject of on-going litigation. We will inform you of the outcome of that litigation once it is resolved. In

the meantime, school officials should not censor student speech at graduation ceremonies based on its religious content. Students should be encouraged to recognize that all students do not share their individual religious beliefs and to be sensitive to that fact in delivering their messages.