

Legally Speaking

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REPORTING CHILD ABUSE

Every employee's responsibility

By Jackie Spoto, Staff Attorney

School district employees have a legal obligation to report their suspicions when they think a child is being abused or neglected. Under section 39.201, Florida Statutes (2000) and **School Board Policy 4.25**, teachers, school officials and other school personnel must report to the state abuse hotline if they have "reasonable cause to suspect that a child is abused, abandoned or neglected." If a school board employee suspects abuse and fails to report it to the hotline, the employee could be criminally prosecuted for a first-degree misdemeanor.

What is "reasonable cause?" We suggest that you call the hotline if you receive **any** report of abuse or neglect. There are some other issues about which you should be aware.

First, it is the responsibility of the person who has the "reasonable cause to suspect" abuse to report it to the hotline and to do so "immediately." **Therefore, you are violating the law if you simply report your suspicions to the principal or SRO and leave it to the principal or SRO to make the report.** It is our suggestion that when an employee suspects abuse, the employee inform the principal and together they call the hotline. The employee and the principal should both keep a record of the call but not in the student's cumulative file.

Second, our new policy will address the broad nature of abuse and neglect. Abuse includes sexual abuse and willful or negligent acts that result in physical injury as well as mental injury. Neglect is a failure to provide sustenance, clothing, shelter, medical attention or needed supervision.

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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 ensuring timely and accurate legal advice and effective representation on all legal matters.

started to slide a little. At first it was an occasional long lunch, but now S. Lacker has started arriving at work late, taking a two hour lunch and leaving early without properly accounting for the absenteeism. In addition, S. Lacker is one of those employees who, due to assigned duties, is often off-site and utilizes his or her private vehicle for school board

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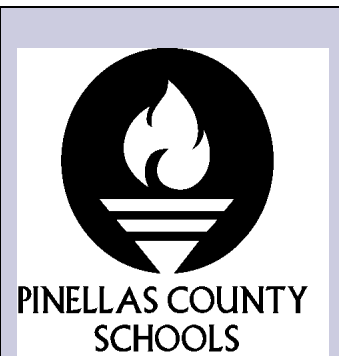
"But Everybody Does It"

By Lisa Jones, Investigator Specialist, Office of Professional Standards

Ah, the battle-cry of the misled. Too often we become lax in our behaviors because we perceive others to be doing the same. Unfortunately, that can

lead us down a path that we truly never meant to go.

For example, say you've noticed that one of your coworkers (hereafter known as S. Lacker) has



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Software Pirates — A vast and Desist!

By Tom Wittmer, Assistant School Board Attorney

Do you ever use a computer at work? If so, you should know that almost all software installed on our district's computers is protected by copyright. Federal law (Title 17 of the U.S. Code) provides certain protections (a "copyright") to the creators of original works, including software. Generally, the owner of copyrighted software makes the software available through licensing agreements. A license is a grant of permission to use the software; it is **not** a transfer of the software ownership. Most software licenses have specific limitations on the user's ability to copy or further distribute the software.

By purchasing a license to install software on a computer, the user agrees to the terms and conditions of the license, including the limitations on use of the software. A new installation of software on another computer only may be made if it is permitted by the license for that particular software; otherwise, it is an infringement of the software copyright. For example, if you purchase software for a calendar or

graphics for your computer, you generally are not permitted to give that software to others after you install it on your computer. For this reason, employees and students should not bring software from home to install onto school computers or district computers.

Once it is no longer needed, software cannot just be thrown away, but all copies must be properly destroyed. Some software is a tagged inventory item that must be accounted for as district property. Unneeded software should be sent to the warehouse for proper disposal. If you get rid of the software by just giving it away or leaving it in a wastebasket, that also may be a copyright violation if someone retrieves and uses it.

The installation or use of unauthorized

copies of software, known as "software piracy," is a growing problem worldwide. Software piracy costs the computer industry more than \$11-billion a year and drains the U.S. economy of jobs and wages, industry experts say. Software piracy has other consequences, too: illegal software is more likely to fail, it has no warranties or support, and it is one of the prime sources of computer viruses that can destroy valuable data.

Individuals and organizations also may be subject to legal liability for software piracy. Federal law permits the owner to enforce its copyright by filing a civil action for injunctive relief and damages against anyone (whether an individual, organization or government agency) who infringes on those rights. In addition,

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Risky Business - The Sympathy Factor

By Ted Pafundi, Director, Risk Management and Insurance

The case seemed simple enough when it was reported on the student injury report form. A middle school girl had fallen off the horizontal ladder at the school playground and suffered a broken arm. Big deal, you may think. Isn't it a fact of life that kids fall off of playground equipment? The big deal is that when the unfortunate young lady was left with an unsightly scar that runs the length of her forearm, it usually follows that the girl's family (and perhaps a jury) would look for someone to blame. Most often they attempt to assign blame to the party who was responsible for supervision. In this case it was the school district.

An investigation revealed that the

sand under the equipment was the proper depth, there was no pushing or shoving on the equipment, and the teacher was standing not more than a few feet from the girl when she fell. So far, so good, right?

When the case went to pretrial mediation, our defense attorney had three major obstacles to winning the case: 1) there was an allegation that the rungs on the ladder were wet, 2) the girl had climbed onto the very top of the horizontal ladder and was performing an unauthorized and risky maneuver called a "cherry bomb" when she fell, and 3) the large scar on the young girl's arm was sure to elicit sympathy from a jury of average citizens. With the odds of winning the case less than 50/50 in our favor, we

were forced to offer a settlement.

This is one of those situations in which those of us who know how careless kids can be and who understand the rigorous demands placed on our teachers would find it hard to assign any blame. So what could the school staff have done differently? If the teacher could have testified that the ladder rungs were checked and were dry, it might have helped. If the teacher had warned the girl not to climb onto the top of the equipment, it might have prevented the fall.

Was the young girl mostly responsible for her own injury? Absolutely! Could we have overcome the jury sympathy factor for the scar? Possibly, if the teacher could have provided the needed testimony **based on a detailed injury report** that showed the district employees were not negligent.

Getting the Word Out

By John Bowen, School Board Attorney

In a previous issue we talked about how to help a local police department get the word out about a summer athletic league that the department is sponsoring for students ([Volume I, Issue 2, p. 3](#)). In that article we referred you to [School Board Policy 6.12, ADVERTISING](#), that provided "the Superintendent (or designee) may approve advertising of events for organizations when such events are deemed to be in the best interest of the students." On May 22, 2001, the School Board adopted a policy that supersedes the old language and gives more guidance on how to "get the word out." The new policy is [School Board Policy 6.125, ADVERTISING OR ANNOUNCEMENT OF NON-SCHOOL EVENTS](#).

The sole purpose of this policy is to provide information to parents about non-school events that may be of interest to students.

The adoption of the new policy generated a lot of public interest because of a misconception that this policy was for the distribution of religious materials or

literature. That is not the purpose of this new policy. In fact, religion is not even mentioned. The purpose of the policy is to assist non-profit community organizations or organizations working in partnership with the school district through the Education Foundation in providing information to students and their parents about non-school events that may be of interest to them.

For example, the Little League may want to send home announcements about tryouts, the YMCA may want to announce the availability of swimming lessons for elementary school students, or a local church may be sponsoring a summer day-care program for working families. This new policy allows these organizations to provide the schools with flyers to announce their activity, provided the flyer meets the requirements of the



policy. The requirements are as follows:

- (a) The sole purpose is to make students aware of before or after school activities, educational opportunities or services, or non-profit community events;
- (b) The content is limited to providing information about the activity and the time, date and place of the event as well as a contact person and telephone number;
- (c) The name of the sponsoring organization is disclosed; and
- (d) The flyer contains a disclaimer in at least 12-point type in bold letters that the school is not endorsing nor sponsoring the event and is not approving or endorsing the views of the sponsoring organization.

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“Everybody Does It”

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business.

S. Lacker has been submitting false “In County Travel Authorization Claim Forms” in an attempt to appear on task and fool anyone who might be a little suspicious.

So you decide, “Well, if S. Lacker can do it, why shouldn’t I? I mean I have faithfully served the district for many years, worked overtime without any complaints and often even bought work supplies with my own money. Besides, nobody cares, right?” **WRONG.**

As public servants we are accountable to both our employer and the public we serve. So much so that there is a law in

Florida that deals with just this issue. It is section 839.25, Florida Statutes (2000), titled “Offenses by Public Officers and Employees.” This statute could make the behavior of S. Lacker a felony of the third degree. The statute provides that a public servant is guilty of “official misconduct” if the employee falsifies or causes another to falsify any official record or document. In S. Lacker’s case, submitting false mileage vouchers, as well as not declaring absences, is clearly “official misconduct.” S. Lacker is busted! S. Lacker loses his or her job and is prosecuted for a felony.

For more information about these or any other Florida Statutes, you can log on to “Sunshine On-Line” at www.leg.state.fl.us/Statutes (click on the search statutes icon).

New Paralegal

As you can see from our staff listing, Nicole Carter is no longer with us. Nicole recently married, relocated to Atlanta and became the instant mother of 2-year-old twins.

Our new paralegal is Elizabeth “Betty” Turner. Betty has lived in Pinellas County for 33 years and has more than 20 years of legal experience working with various litigation attorneys. She has a paralegal certificate from Southern Career Institute, and in 1998 she passed the Paralegal Advanced Competency Exam and received certification as a PACE Registered Paralegal. Betty enjoys oil painting, reading and walking. We welcome Betty as she already has proven herself to be a valuable addition to our team.

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Suzanne Cortina — Legal Secretary

Melanie Davis — Receptionist/
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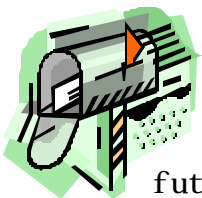
Jackie M. Spoto — Staff Attorney

Diane Luisi — Legal Secretary

**Software Pirates — A vast and
D esist!** *(Continued from page 1)*

tion, a willful infringement of copyright is a federal crime, punishable by a term of imprisonment, a fine or both. Chapter 815 of Florida Statutes prohibits the unauthorized modification, destruction or taking of computer programs and classifies such offenses against intellectual property as felonies. **School Board Policy 8.15, *Reproduction of Copyrighted Materials***, also prohibits employees from reproducing copyrighted material without permission.

The cost for violation of the software copyrights can be substantial. Recently a



Please send comments or article suggestions for future issues to
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Getting the Word Out *(Continued from page 3)*

The event must be deemed by the Superintendent or designee to be consistent with the fundamental values of the school district. Once that determination is made and the flyer is approved by the area office, schools are required to distribute it as provided in the policy. Principals can determine the method of distribution. The flyers may be placed at a specified point or points where students may pick them up if they are interested. The written disclaimer must be displayed prominently at the point of distribution. The principal may also allow distribution of the flyers in the classroom by school employees or volunteers, as long as they give the required disclaimer notice orally before passing out the flyers.

This policy opens the doors of the schools to allow dissemination of information about non-school events of interest to students and parents. When the School Board permits announcements by non-profit organizations such as the Little League, YMCA or Boy Scouts, it cannot discriminate against other non-profit organizations. It cannot say to religious organizations that they are not allowed to advertise their events because it is thought that someone might assume that the school district as a governmental body is endorsing a religious activity. To not allow the religious organization the same opportunity would be showing hostility toward religion and probably would be deemed unconstitutional. On the other hand, the disclaimer is intended to make it clear that the school is not endorsing the event or the views of the organization, thus avoiding an unconstitutional entanglement with religion.

We are hopeful that this new policy will allow schools to continue partnerships with community organizations in "getting the word out" about non-school events that may be of interest to students and their parents. This will allow the parents to make an informed decision of whether they want their child to participate. Just make sure that any flyers that are passed out in your school have gone through the required approval process and contain the required disclaimer.

school district in California was the target of an enforcement action when it was alleged that teachers and other employees had illegally copied software programs. The district settled the matter by paying a fine of \$300,000 and is spending \$3-million to replace the pirated materials.

Don't be a software pirate! If you have any doubt that the software you are using on one of our district's computers is properly licensed, please contact your worksite administrator.

of an abuse report, our office can assist the school and area office in dealing with the parent.

Finally, if you make a report in good faith, even if it turns out not to be abuse, that is okay and the law protects you. Specifically, section 39.203, Florida Statutes (2000), gives school personnel immunity when they make abuse reports in good faith.

The Social Work Department can provide training as well as a pamphlet that further explains the law and also provides a description of the many physical and behavioral indicators of child abuse and neglect.

**REPORTING CHILD
ABUSE** *(Continued from page 1)*

Third, the names of school personnel who report suspected abuse are confidential. Unfortunately, we do know that parents usually figure out that somebody at the school reported them. If a parent starts causing problems at a school because

**FLORIDA ABUSE HOTLINE
1-800-962-2873
(1-800-96ABUSE)**