

# 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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## Rites of Initiation

By Thomas L. Wittmer, Assistant School Board Attorney

Have you ever wanted to join a group and been faced with some kind of initiation ritual? How far were you willing to go? Did you think maybe it was hazing?

"Hazing" refers to harassment, intimidation, abuse or humiliation of others, usually in connection with some kind of initiation. Hazing can take the form of physical brutality (e.g., whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of food, liquor, drugs or other substance) or other actions that cause mental stress (e.g., sleep deprivation, forced exclusion from social contact, head shaving or other forced conduct causing embarrassment).

Most hazing occurs in the university or college setting. However, according to Hank Newer, author of *High School Hazing: When Rites Become Wrongs*, hazing is becoming more prevalent among high school students, and the acts themselves have grown more malicious, sadistic and sexually oriented. A recent survey by Alfred University in New York found that 48 percent of all

It does not matter that the hazing has occurred before or that rookies now are willing to participate ... it still is prohibited.

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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.*

## \*What do you guys do, anyway?\*

By John W. Bowen, School Board Attorney

From time to time we get calls from employees around the district asking for personal legal advice. For example, one employee wanted us to advise him on how to write his will and a power of

attorney. We even get calls from the public asking us to give legal advice on what they should do. The school system's legal department simply cannot give out such legal advice.

That raises the question of "What do you guys do, anyway?" To put it simply, we already have an overflowing plate without adding personal legal advice to employees and the public.

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# Alcohol in the Workplace; Don't Wait Until It Is Too Late

By Jim Barker, Administrator, Office of Professional Standards

**School Board Policy 8.23, Drug-Free and Alcohol-Free Workplace**, was adopted in 1989 in compliance with the Drug-Free Workplace Act of 1988. It requires school districts that receive federal money to certify that they will maintain a drug and alcohol free workplace. **We strive to be a drug-and alcohol- free workplace, not a work-free drug and alcohol place.**

Unfortunately some employees do not comply with this policy, and when that occurs they are subject to progressive discipline pursuant to **School Board Policy 8.25, Disciplinary Guidelines for Employees**.

Our employees are seen as role models for students. They are also frequently entrusted with supervision of students, which is a safety concern if the employee is impaired. When employees come to work with the odor of alcohol on themselves, whether during the school day or at an after-school function, it can cause serious con-

cerns. Employees who are observed slurring their speech, having trouble standing up or exuding the odor of alcohol are certainly not exhibiting appropriate behavior nor are they likely to be performing the job well. Parents, students and staff members who encounter those employees certainly will be alarmed.

When employees wait until after they have been arrested for an alcohol-related offense or have been observed in the workplace with an alcohol problem, it may be too late to save their career, especially if they have had a history of prior alcohol problems.

When employees want help for an alcohol-related problem, it is available through the Employee Assistance Program (EAP). Counselors can provide assistance for employees individually or in group sessions. Alcoholics Anonymous is also encouraged for some employees. Employees who seek assistance voluntarily before

problems occur in the workplace, or criminally, will not have any negative employment action taken against them.

If you know of an employee who may need help, encourage him or her to call the EAP number at 1-800-492-4945 (available 24 hours, seven days a week). The EAP can provide counseling and assistance for employees and their families with substance problems at no cost for the first three visits (per incident). It might save them from serious consequences.

**DON'T WAIT UNTIL IT IS TOO LATE!**



## Software Pirates - the Sequel: Beware of Audits!

By Thomas L. Wittmer, Assistant School Board Attorney

In the last issue of *Legally Speaking* we explained the problem of software piracy – the installation or use of unauthorized copies of software on computers. Federal copyright law protects the owners of commercially available software, including games, and prohibits unauthorized duplication. When you purchase a software license, that only gives you the right to use the software; it does not transfer ownership. Most often, a license permits the user to load the software onto a single computer and make one

backup copy. Those who copy software without authorization are in fact stealing someone else's property, and they are breaking the law.

Software, hardware and e-commerce developers from 65 countries (including Adobe, Apple, Dell, IBM, Intel, Intuit, Microsoft and others) have joined together to form an international watchdog organization known as the Business Software Alliance (BSA). The BSA strives to educate users about software copyrights, to advocate public policy and to fight software piracy. Recently the BSA obtained settlements from one company in Largo and another in Tampa. The companies

agreed to pay a combined total of \$208,500 to settle claims relating to unlicensed copies of software programs installed on office computers, and they also agreed to delete any unlicensed copies and purchase replacement software.

As part of its enforcement activity, BSA regularly undertakes software audits to verify that installed software has been properly licensed. This sometimes involves on-site visits. Such verification may be authorized by the terms of a software license.

If a representative of the BSA or a similar organization contacts your school or worksite and requests an on-site visit to audit software, please contact our office. You should direct the organization to call our office also so that we can help to coordinate the audit process.

## *“What do you guys do, anyway?”* (Continued from page 1)

You can imagine that a school district this size (21st largest school district in the nation) faces many legal challenges that require legal representation. That representation is provided by the school system's legal department. The legal department itself consists only of three attorneys, a paralegal, two legal secretaries and a bookkeeper/legal clerk. Because of the huge volume of legal work, several private law firms help provide legal services under the supervision of the school system's legal department.

The School Board Attorney (yours truly) is hired by and reports to the School Board. With the help of the Assistant School Board Attorney (Tom Wittmer), we provide legal advice and representation to the School Board. We also act as general counsel for the school district. In that capacity we provide representation and legal advice to the Superintendent as chief executive officer for the School Board and legal repre-

sentation and advice to the school district's staff in matters pertaining to the operation of the district.

The school district also employs a Staff Attorney (Jackie Spoto) who reports to the Superintendent. She is responsible for representing the Superintendent when there is a recommendation by the Superintendent to the School Board for student or employee discipline. The staff attorney is completely independent of the School Board Attorney when performing those functions.

In all other matters the attorneys act as a legal department providing legal advice and representation in the areas of contracts, pupil assignment, transportation, facilities, real property, food services, maintenance, curriculum and instruction, auditing, exceptional student education, personnel, student records, purchasing, governmental relations, and policy and planning. The attorneys do not act independently in these areas. We

will consult with each other before responding to a request for legal advice to ensure consistent advice over time.

It is impossible for us to provide direct legal advice to more than 18,000 employees. So, how do you get legal advice when you need it on a matter concerning the performance of your job? First of all you should ask your supervisor. If your supervisor does not know the answer and is not authorized to contact our office directly, then he or she will submit a request to his or her supervisor until the supervisor is one who knows the answer or is authorized to contact our office directly. Usually, this is no more than two steps.

In this litigious society, it is better to seek advice before taking action. You just may avoid a lawsuit. Just as preventive medicine cost less than hospitalization, preventive law costs less than litigation.

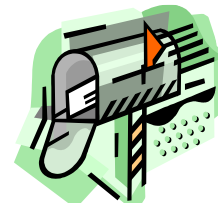
## Dear John ...

... I have a student in my class who does not want to stand for the Pledge of Allegiance. I feel that he is showing disrespect to his fellow students and the country. I know that we cannot force him to recite the Pledge. Am I allowed to require him to at least stand while others are saying the Pledge?

**Answer:** *School Board Policy 6.13, Patriotic Observances and Periods of Silence*, requires that the school day begin with the Pledge of Allegiance to the flag. The policy also provides that a moment of silence will follow the Pledge. Students and faculty members who do not wish to participate in the Pledge or moment of silence "should maintain a respectful silence, refraining from any act that would interfere with such observances."



Please send comments or suggestions for future articles to Melanie Davis at [davisme@pinellas.k12.fl.us](mailto:davisme@pinellas.k12.fl.us)



I do not believe that remaining seated while others are reciting the Pledge is an "act that would interfere with" the Pledge. Refusing to stand could be considered protected symbolic speech under the First Amendment of the United States Constitution. Also, the student may have religious objections to any type of participation in pledging allegiance to a flag. That is also protected by the First Amendment's Free Exercise Clause, which protects a citizen's

right to practice his or her religion.

The answer to your question, therefore, is no, you cannot require the student to stand. You should, however, make sure that other students do not harass the student for not standing. This could be an opportunity for a "teaching moment" about constitutional law. These are rights that the enemies of our country never would allow their citizens to exercise.

**God Bless America!**

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- Betty Turner — Paralegal
- Suzanne Cortina — Legal Secretary
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- Melanie Davis — Clerk/Bookkeeper

**Rites of Initiation** *(Continued from page 1)*

students who join any group in high school are subjected to hazing.

Hazing is sometimes accomplished through horseplay, practical jokes and tricks, often with humiliating or painful activities. Even the "mild" forms of hazing involve some degree of intimidation or embarrassment of those being hazed: being tormented, taunted or made fun of; not being spoken to; only being allowed to associate with other members; being "ditched" in a public place. In one school, a soccer team taped a sophomore student to the goal post on the football field.

But hazing can result accidentally in severe harm to students. In 1975 a high school-sponsored club in Duval County held an initiation ceremony with hazing that resulted in a student being seriously injured with a severed spinal cord and permanent paralysis from the neck down. *The American Journal of Forensic Medicine and Pathology* reports numerous injuries and deaths from hazing involving the use of alcohol, "road trips" and "line ups" or exercise programs.

Students do not have the right to harass, intimidate or make fun of other students. **Hazing is strictly prohibited in our schools and in connection with any school-sponsored events.** Hazing activity by students is a violation of the "Code of Student Conduct" and may also be a violation of **School Board Policy 8.24, Guidelines to Prevent Sexual Harassment**, or **School Board Policy 8.241, Prohibition of Harassment**. In addition, certain hazing activities may be punishable as criminal acts.

Sometimes hazing is called a tradition because the older members of the group have gone through it in the past. Often the newcomers are compliant and agreeable to being hazed because they feel the need to belong to the in-group or be a part of the team. It does not matter that the hazing occurred before or that rookies now are willing to participate in hazing activity – it still is prohibited.

Hazing is often connected with fraternities and sororities. You should be aware that Florida Statutes and our district's "Code of Student Conduct" prohibit the formation of "secret" societies at schools. These are student social clubs that take in new student members on the basis of the decision of the other members rather than on the right of any pupil who is qualified by rules of the school to be a member. Hazing is sometimes associated with such secret clubs, but it also may occur in connection with legitimate school-sponsored groups or activities. For example, sports teams sometimes want to hold initiations and expect the new members to submit to rituals that are, in effect, hazing activities.

The Principles of Professional Conduct for the Education Profession are clear that an educator should make reasonable efforts to assure that each student is protected from harmful conditions. There are better and safer ways than hazing for a group to bond and build camaraderie. All employees should be alert to any reports of hazing or intended hazing involving students. Do not put yourself or students at risk! **If you observe or learn about an incident of student hazing, report it to the principal or school resource officer immediately.**



*"The district, schools and community will work together to provide a safe learning environment."*

