

Legally Speaking

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PINELLAS COUNTY SCHOOLS

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What's So Special About Special Ed?

Part I-History and Overview

By Marcia MacKenzie, Supervisor, Exceptional Student Education Compliance, and John W. Bowen, School Board Attorney

Did you ever wonder why education of students with disabilities is so complicated? Why do we have so many meetings and why is so much paperwork required to educate children with special needs? The answer is neither simple nor short. Therefore, we are going to do a series of articles about the legal requirements for educating students with disabilities. In this issue, we will start with a historical background about educating students with disabilities and give an overview of the general requirements of the law.

Prior to the 1970s, children with handicaps were excluded from the public school system if they could not be educated successfully in the regular education program. For the most part there were no special education programs to serve children with handicapping conditions in the public schools. Agencies other than the public school system provided special education programs for handicapped children, particularly children classified as educable, trainable and profoundly mentally retarded. (Such children are now referred to as mentally handicapped in Florida although federal law still uses the term "mental retardation.")

Children with learning disabilities were left to sink or

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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.

I was arrested!

What do I do?

By Jim Barker, Administrator, Office of Professional Stan-

The Pinellas County School Board has more than 20,000 employees and, unfortunately some of our employees are arrested from time to time. When that occurs, the employee is required to inform the district about the arrest.

Employee Investigations, states:

All employees are required to notify their supervisors immediately if they are arrested or given a Notice to Appear for any criminal offense, including driving under the influence (DUI) and any other criminal traffic offenses and local ordinance violations punishable by any period of in-

School Board Policy, 8.04(4),

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I was arrested!

What do I do?

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carceration, or charged in any way with such offenses. Administrators and supervisors who become aware of subordinates who have been arrested, charged or given a Notice to Appear for such offenses will immediately notify the Office of Professional Standards.



quired to “self-report any conviction, finding of guilt, withholding of adjudication, commitment to a pretrial diversion program, or entering of a plea of guilty or nolo contendere for any criminal offense within 48 hours after the final judgment.”

Certainly, all employees who are arrested are not dismissed from their jobs. **School Board Policy 8.25, *Disciplinary Guidelines for Employees***, contains a list of offenses and consequences for employees. When an employee does report an arrest, an administrator from the Office of Professional Standards will review the criminal charge and make a determination whether to monitor the case or proceed with possible administra-

tive charges and recommendations to the Superintendent and the School Board. In the majority of cases the school district waits until the outcome of the criminal proceedings prior to taking any action. As with criminal cases, employees are afforded due process when they are facing possible disciplinary action.

If you are arrested, you should be careful when considering a plea bargain. While it might be cheaper to enter a plea of nolo contendere in return for a withholding of adjudication of guilt, if the charge is a felony or has anything to do with sex or drugs you could lose your job. It is important to seek competent legal advice before accepting a plea bargain. Your attorney can call the Office of Professional Standards or the Staff Attorney if he or she has any questions concerning the impact of a plea bargain.

In addition, the Code of Ethics and the Principles of Professional Conduct require that teachers and administrators “self report within 48 hours” to the Office of Professional Standards “arrests or charges involving the abuse of a child or the sale or possession of a controlled substance.” In addition they are re-

What do you do when ...

By Thomas L. Wittmer, Assistant School Board Attorney

... a stepfather of a child at your school calls and asks to have a conference with the teachers to review recent records about his stepchild? The stepfather indicates that the child’s mother is busy at work and will not be able to attend the conference, but he is available and will be there for the conference.

First, check the student’s file to see if there is any legal documentation about the status of the stepfather. Look for a court order that establishes some legal relationship between the stepfather and the child. Unless a stepparent has adopted the child or been appointed by the court as a guardian, he or she is not recognized as a parent or a guardian of the child. If the school’s records reflect that the stepfather has been legally recognized as a parent or guardian, then you can proceed to schedule the conference.

If there is no such documentation in the file, then the mother must give written permission prior to any release of the student’s records to the stepfather. The reason for this requirement is that the conference being requested would involve a discussion with the teachers and a review of the student’s records. Both federal and state law provide that school records about the children enrolled in our schools are confidential and, with few exceptions, may not be released to persons outside the school system unless a parent has given prior written consent. The child may give such consent only if he or she is over the age of 18 or is married.

As explained in an earlier ***Legally Speaking*** article (Vol. 1, Issue 2, page 3), student “records” include “any ... evidence, knowledge or information recorded in any medium” that is maintained and used by the school system. The mother’s consent must specify the records to

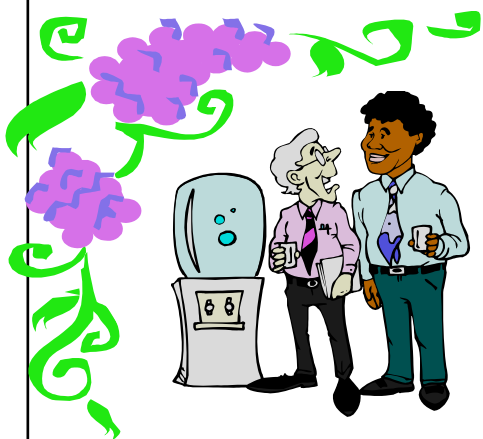
be released and identify the person to whom they are to be released. See **School Board Policy 4.17, *Security of Student Records*** and page 16 of the district’s *Student Educational Records Manual*.

If the mother has given written consent for the school to release the student’s records to the stepfather and you are satisfied that the consent is broad enough for the requested conference, you can go ahead and schedule the conference. If the mother has not yet given her written consent or it is not sufficient for the purposes of the conference, then inform the stepfather that the mother must provide her written consent for release of the student’s records to him before the conference can be scheduled.



I Heard a Rumor!

By Jackie Spoto Bircher, Staff Attorney



The vast majority of school board employees know that they should not flirt with, date or have sexual relationships with students. Unfortunately, there have been several allegations lately relating to inappropriate romantic or sexual relationships between teachers and students. One former teacher recently pled guilty to having such a relationship, and he was sentenced to five years in prison.

It almost always constitutes a crime when a school board employee has a sexual relationship with a student.

Even in cases that for one reason or another are not prosecuted by the state attorney's office, the School Board will fire the employee. The School Board does not need to prove that the student was under 18 or that there was a sexual relationship to fire an employee; it is enough for the School Board to show inappropriate conduct, such as kissing, between an employee and student.

So what do you do when you hear a rumor or suspect that there is a relationship between a school board employee and a student? You report it immediately to the school principal. Do not discuss it with the employee rumored to be having the relationship. Law enforcement may

consider criminal action against you if you do that. What will the principal do? Report it to law enforcement and to the Office of Professional Standards. If the principal is unsure whether to report the matter to law enforcement, the Office of Professional Standards will guide him or her.

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Dear John ...



In the last Dear John, I stated that a teacher cannot require a student to stand for the Pledge of Allegiance, reasoning that the student's refusal to stand could be protected symbolic speech or the exercise of religion, both protected by the First Amendment. Shortly after *Legally Speaking* hit the streets, a student called my attention to Section 233.0655, Florida Statutes (2001) and asked how my answer can be correct in light of that statute.

That statute was passed in 1999 and, among other things, requires that the Pledge of Allegiance to the flag be recited at the beginning of each day. It also requires the posting of a notice in a conspicuous place advising students that they

have a right not to participate in reciting the pledge. The student must be excused from reciting the pledge upon the written request from the parent. While the statute does not directly say that the student must stand during the pledge, it requires that "civilians must show full respect to the flag by standing at attention" when the pledge is given. I will concede that most students are "civilians" so how come they do not have to stand?

While the school district must uphold the law, when there is a conflict between state statutory law and the United States Constitution, we must enforce the

higher law. This is a clear case of such a conflict. In 1969, The United States Supreme Court decided the case of *Tinker v. Des Moines*. In that case students had been suspended from school for wearing black armbands to protest the Vietnam War. In ruling for the students, the Supreme Court said that the wearing of black armbands was symbolic speech protected by the First Amendment. The Court coined the now famous quote that students do not "shed their constitutional rights ... at the schoolhouse gate."

Thus, the state statute requiring students to stand for the Pledge of Allegiance conflicts with the First Amendment to the United States Constitution. The Constitution prevails.



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What's So Special About Special Ed? (Continued from page 1)

swim on their own in the regular school program. Without programs tailored to their individual abilities, frequently they sank. Students with orthopedic impairments would find the public school to be an environment hostile to their condition. Deaf or blind students also were relegated to special institutions. Students with emotional handicaps and serious emotional disorders were expelled for their misbehavior.

In the late '60s, Florida started mandating that school districts provide educational services to all children, even those with profound handicaps. The federal government followed suit with the passage of Section 504 of the Civil Rights Act of 1973. Section 504 prohibits discrimination against an otherwise qualified individual based on handicapping conditions in any program that receives federal funds. Because public school districts in Florida receive federal funds such as Title I or the school lunch program, Section 504 applies. Although Section 504 was based on receipt of federal funds from other sources, it was an unfunded mandate.

Then Congress passed the Education of All Handicapped Children Act of 1975, otherwise known as Public Law 94 -- 142. In 1991 Congress changed the name of the act to the Individuals with Disabilities Education Act (IDEA). The IDEA is a "grant formula" law. It provides states with federal money to help educate students with disabilities provided states agreed to comply with the detailed requirements of the law. Florida applied for and received the federal money so Florida school districts must comply with the provisions of the IDEA.



Generally speaking, IDEA requires that each student with disabilities be provided with a free appropriate public education (FAPE) consisting of special education and related services designed to meet the individual needs of each child. FAPE must be provided at no cost to the parents regardless of what is required to provide an appropriate education.

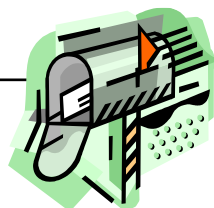
For example, if a child with severe disabilities requires an around-the-clock structured program seven days a week in order for the child to be able to learn, the local school district must provide it or partner with other agencies to fund the educational portion of the student's placement. Such a residential program can cost in excess of \$100,000 a year and must be provided **at no cost to the parents**. A school district cannot claim lack of funds to get out of this obligation. Unfortunately, the federal funds received by the district account for less than 15 percent of the cost of educating students with disabilities. The rest comes from the local school district's budget.

In future articles we will talk about what constitutes "appropriate," evaluation and eligibility requirements, individualized educational programs (IEPs), the least restrictive environment (LRE) requirement, related services, due process protections, stay put requirement, and discipline of students with disabilities. Stay tuned!

I Heard a Rumor!

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Have employees ever been falsely accused? Yes they have, and the best thing that can be done under those circumstances is a thorough investigation. There have been several times in the past few years that this has occurred. Although it is a true affront to innocent employees to be falsely accused of such things, a good and thorough investigation can clear any doubt about their conduct.



Please send comments or suggestions for future articles to
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