Pinellas County School Board Attorney's Office

Legally Speaking

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PINELLAS COUNTY SCHOOLS

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WHAT HAPPENS IF I DO THIS?

By Jim Barker, Administrator, Office of Professional Standards

Did you ever wonder what might happen if you did something wrong? Well, you don't have to wonder.

Employee discipline guidelines are outlined in School Board Policy 8.25. They were developed in 1995 as a result of continued questions regarding employee misconduct and appropriate discipline. Up until that time "past practice" was used to determine disciplinary action against employees. Most employees had no idea what were the "past practices."

In 1995 a task force consisting of representatives from the School Board, PCTA, PESPA, IBFO, PBA, PAA and the Office of Professional Standards was formed. An ethicist from the University of South Florida also served on the task force. Input regarding employee discipline was gathered from corporations, municipalities, law enforcement agencies, other educational institutions, other school systems, the Department of Education and the personnel department.

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.

A list of offenses was developed with a range of possible consequences listed for each offense. Personnel actions in Pinellas County were reviewed back through 1980. That data provided past practices for disciplinary action for different offenses. In addition, a list of aggravating and mitigating circumstances that might affect the disciplinary action was developed. Progressive discipline also was defined and explained.

The draft was sent to the various organizations and employee groups. It was submitted to the School Board as a policy on May 23, 1995, and adopted. The policy was amended on June 30, 1998, to become School Board

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What's So Special About Special Ed.?

Part III-Private School Vouchers for Special Ed. Students

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

In the last issue of *Legally Speaking,* we discussed the school district's obligation under the Individuals with Disabilities Education Act (IDEA) to provide each child with a disability a free appropriate public education (FAPE) even if it means paying for a private school placement at public expense. We pointed out that under IDEA, parents cannot get such a private school placement unless they can show that their child's proposed individualized education program (IEP) is not "reasonably calculated" to provide "some educational benefit." That is a difficult standard to meet. The Florida Legislature, however, has made it much easier for parents of students with disabilities to obtain a private school placement at public expense.

In 1999 the Legislature created the Opportunity Scholarship Program for public school students in so-called failing schools. If the state grades a public school in category "F" for two school years in a four-year period, the students in that school are entitled to receive vouchers to attend private schools. Also in 1999, the Legislature initiated what would turn out to be a much larger voucher program for students with disabilities. That voucher program is known as the John M. McKay Scholarships for Students with Disabilities Program, named after the Senate President who originally sponsored the program.

On Aug. 5, 2002, a circuit judge in Leon County ruled that the Florida Opportunity Scholarship Program violated Article I, Section 3, of the Florida Constitution. That provision prohibits state or local revenue from being used "directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution." That case will be decided by the Florida Supreme Court. While the McKay voucher program was not a part of that suit, should the Florida Supreme Court uphold the circuit court decision, that would mean that the McKay voucher program would be unconstitutional also.

> Parents should be encouraged to ask the private school they are considering if the private school will provide the parents the same protections they have in the public school.

Under the McKay voucher program the parents of a student with a disability do not need to show that the school district is not providing an appropriate program for their child. The parents merely have to state that they are "dissatisfied with the student's progress." It is a voucher-on-demand program. There are some requirements, however, that the parents must meet to be eligible for a McKay voucher.

First, the student must have been in attendance in a public school and reported as enrolled by the school district during October and February of the previous year when surveys are conducted for funding purposes. If the student was in attendance the previous year, the student must have been accepted for admission by a private school that is on an approved list of the state Department of Education.

The statute requires that the parents also must notify the school district in writing of their request for a voucher at least 60 days prior to the first voucher payment. The first voucher payment of the year is on Sept.1st. Therefore, the written notification must be provided to the district on or before July 1. The statute also provides that a parent can fulfill this notification requirement electronically by going to the McKay Scholarship Website at www.opportunityschools.org. A website link entitled "Parental Notice of Intent" will lead the parents through the process of filing a Notice of Intent. Parents who do not have access to the Internet may contact the Scholarship Hotline at 800-447-1636 to file the notice of intent.

The McKay voucher program also provides that students with disabilities can choose to go to another public school in their district or may choose to enroll in an adjacent

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Removal of District Equipment by Employees and Students

By Bonnie Jenks, Property Records Supervisor, Auditing & Property Records

When district equipment is removed temporarily from a school or department by an employee, a "Property Removal Request Form" must be completed and kept on file until that item is returned. This requirement is set forth in School Board Policy 7.19 (1) as follows:

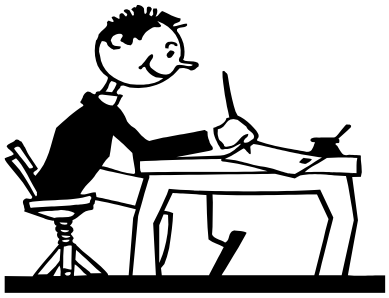
> *The principal, director, department head, or other employee so designated by the Superintendent may check out appropriate equipment to employees, for a specified period of time, for job-related purposes using the property removal request form (PCS 1943). (This form number will soon be changed to number PCS 3-1943.)*

Sub-paragraph (2) of this policy addresses removal of board-owned equipment by students and requires the use of the appropriate property removal form. Students already use a band instrument rental form to take home instruments owned by the district. More and more frequently, however, other kinds of equipment are being taken home by students for their assignments on the school newspaper, yearbook or for a special classroom project. Up until now, there has not been a form for this kind of equipment removal by students.

The "Property Removal Request Form" used by employees now has been revised to include students. Signature lines have been added for the student, parent or guardian, and the teacher in charge of the project for which the equipment is being used. Also, additional language has been added to clarify the responsibilities incurred by the individual removing the equipment. **The newly revised form is PCS 3-1943.**

This paperwork is necessary to safeguard the millions of dollars spent by the district for equipment to benefit and support our students and their learning environment. It is the responsibility of each employee and student to help keep track of district property by using this new form when removing equipment from the school or work location.

Dear John ...



Q: Last year during the Great American Teach-In program, a volunteer wanted to read to my class from the New Testament of the Bible. Is this appropriate?

A: The Great American Teach-In is part of the district's annual American Education Week celebration. Sponsored by Florida Power since 1994, the Teach-In provides an opportunity for the public to volunteer to talk to students about most any subject matter that may be of interest to the volunteer. This year the event is scheduled for Wednesday, Nov. 20.

While the volunteers can talk about most any subject, there are restrictions. They are, in fact, teaching a class. As a volunteer teacher, they are subject to the same laws that control the regular classroom teacher. It would be inappropriate for the regular classroom teacher to read from the New Testament of the Bible or to lead the class in prayer because that would violate the Establishment Clause of the 1st Amendment of the United States Constitution. The volunteer teacher is bound by that same constitutional provision.

That is not to say that we cannot have a local minister volunteer for the Great American Teach-In program and talk to the class about being a minister. Talking about an individual's occupation is a common topic that volunteers may address. If we were to tell ministers that they could not talk about their occupation while allowing others to do so, that would be showing hostility against religion and would be a constitutional violation. As a governmental body, we have to remain neutral.

The Great American Teach-In is a valuable program, but we do not want to inadvertently violate the Constitution. It is not intended to be an open forum for volunteers to come in and advocate for their individual religious or political beliefs.

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

Tom L. Wittmer, Asst. School Board Attorney

Jackie Spoto Bircher, Staff Attorney

Betty Turner, Paralegal

Suzanne Cortina, Legal Secretary

Diane Luisi, Legal Secretary

Melanie Davis, Clerk Spec II - Newsletter Publisher

WHAT HAPPENS IF I DO THIS?

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Policy 8.25.

The guidelines provide a range of consequences for various offenses that include caution, reprimand, suspension without pay and dismissal. In addition, the guidelines provide for due process, including an administrative hearing before an impartial administrative law judge (ALJ) for employees who are being recommended for a suspension without pay or dismissal. The ALJ is from the Division of Administrative Hearings (DOAH) in Tallahassee and is not an employee of the Department of Education or the school district. Probationary employees, including both supporting services and teachers, are not entitled to administrative hearings.

The School Board reviewed the policy at a workshop on June 19, 2001, and after discussion decided not to make any changes. The policy eliminates the unknown and provides employees with assurances that they will be treated fairly even when they violate Board policy.

What's So Special About Special Ed?

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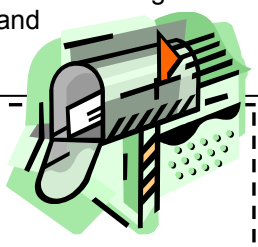
school district that has available space and an appropriate program. In Pinellas County, the federal court order dealing with desegregation provides a specific method of assigning students to schools. Allowing students with disabilities to choose to go to another public school in the Pinellas County school district would be inconsistent with the federal court order. Because federal law supersedes state law, the McKay voucher program allowing for choice to another public school in the district is not available until the court order ends in the 2008-2009 school year.

The dollar amount of the voucher to go to a private school is based upon the level of services identified in the child's IEP that the public school system was providing. Parents need to understand that, although the private school is receiving that specified amount of money to provide that identified level of services in the IEP, the private school is not obligated to provide those services. That is why it is important for parents to have the private school, **prior to enrollment**, specify in writing what services the private school will be providing. Once the student enrolls in the private school, the school district will no longer provide the special education services.

Finally, it is important for parents to understand that when parents take their child out of the public school on a McKay voucher, the state considers that to be a private placement by the parents. As a private placement by the parents, the child loses all of the protections he or she has under IDEA. There is no right to a written IEP. There is no right to request a due process hearing to challenge the appropriateness of the education being provided. There are no protections in the discipline procedures of the private school. The private school can expel a child without a hearing. There are no requirements for the private school to conduct reevaluations to determine a child's current needs. There are no requirements for the private school to involve parents in decisions concerning changes in the educational program.

To see all the protections that parents are giving up, they should review the written procedural protections they were given at their last IEP meeting. If they do not have a copy, then they should contact their school for a copy. Parents should be encouraged to ask the private school they are considering if the private school will provide the parents the same protections they have in the public school. If they will not provide those protections, the parents will know in advance what they are giving up. At least in that event the parents will be making an informed choice.

In the next issue we will talk about what students are eligible for special education services under IDEA and how we determine eligibility.



Please send comments or suggestions for future articles to Melanie Davis at davisme@pinellas.k12.fl.us.