

Legally Speaking

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PINELLAS COUNTY SCHOOLS

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MILITARY RECRUITERS GAIN ACCESS TO SECONDARY STUDENTS

By Tom L. Wittmer, Assistant School Board Attorney



Under the federal Family Educational Rights and Privacy Act (FERPA), students and their parents have a right to privacy with respect to information contained in a student's record maintained by the school. Some information in a student's record is not considered confidential by FERPA if a district defines it as "directory information." The district must notify parents annually that the directory information may be released to the public if the parents do not file a written objection. See *What do you do when ... ? Legally Speaking, Volume 1, Issue 2, page 3.*

Generally, military recruiters have been able to access directory information in order to contact students. However, in this district directory information is defined as the student's name; image or likeness in pictures, video, film or other medium; dates of attendance; major field of study; participation in sports and activities; height and weight of athletic team members; degrees and awards received; most recent previous educational institute attended; subsequent educational institution attended and academic work intended for publication or display. See **Policy 4.15, Annual**

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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.

Discrimination in the Workplace

By Jim Barker, Administrator, Office of Professional Standards

Employees and students are protected from discrimination and harassment in the workplace by federal and state statutes and school board policy. **School Board Policy 8.241, Prohibition of Harassment**, states "... the Pinellas County School Board provides a working and education environment free from discriminatory intimidation, insult, and ridicule, and takes action to eliminate such practices or remedy their effects."

In the policy "harassment" is defined as verbal or physical conduct that denigrates or

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What's So Special About Special Ed.?

Part V-The Individualized Education Program (IEP)

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

Teachers have lesson plans that show what they are going to teach students in their class on a given day. The Individuals with Disabilities Education Act (IDEA), its implementing regulations and the corresponding state law and regulations require that each student with a disability have an individualized education program (IEP) that sets forth in writing what special education and related services will be provided to that individual student during the school year.

While individual teachers will prepare their own lesson plans, the IEP for a student with a disability is prepared by an IEP team. The team includes the parents of the student and at least one regular education teacher of the child if the child is participating (or may participate) in the regular education program. The team also includes at least one special education teacher of the child and a district representative who is qualified to provide (or supervise the provision of) the special education designed to meet the unique needs of the child with a disability. The district representative must be knowledgeable about the general curriculum and about the availability of district resources.

One member of the team must be

an individual who can interpret the instructional implications of the results of the student's evaluation. (See [Volume III, Issue 2, page 2.](#)) That person can be one of the individuals discussed in the previous paragraph or an additional team member. The parents or the school district can add other individuals to the team who may have knowledge or special expertise regarding the child. Finally, the student with a disability may be a member of the IEP team if appropriate.



The IEP team will meet and consider all information available concerning the child with a disability and develop a plan on how the child will be educated. The IEP must include numerous elements as required by IDEA and its implementing regulations. Once the IEP is developed, it is reviewed at least annually and changed as necessary. The parents or the district may request that it be reviewed and changed more frequently.

If an individual fails to implement the portion of the IEP for which he or she is responsible, that could constitute an unauthorized change in the IEP by that person and could be considered a violation of IDEA.

The IEP is a comprehensive plan and an extremely important document. It guides the delivery of special education and related services. Each person providing services to the student should be familiar with the IEP, be careful to implement its provisions as written and be able to address the student's progress toward achieving the annual goals included in the IEP. If an individual fails to implement the portion of the IEP for which he or she is responsible, that could constitute an unauthorized change in the IEP by that person and could be considered a violation of IDEA.

In a future issue we will discuss what happens when the parent disagrees with what the school district proposes in the IEP. ■

Dear John ...

Q. A mother wants to see her son's FCAT materials, including his answer sheet, test booklet and the answer key. Does a parent have a right to see these materials?

A. These materials are in the possession of the Florida Department of Education (DOE). The DOE takes the position that the FCAT materials are not student records



and are denying parents access to them. In the fall of 2001, a parent from Pinellas County filed suit against the state to gain access to her son's FCAT test booklet, answer sheet and answer key. Her son failed the test in 10th grade and is in danger of not graduating. A circuit court judge in Tallahassee

ruled on Oct. 2, 2002, that the parent did have a right of access to her son's FCAT materials. That ruling has been appealed.

In so ruling, the court noted that the Legislature gave an expansive definition of student "records and reports." The term includes "any and all official records, files, and data directly related to pupils and students which are created, maintained, and used by public educational institutions." The court pointed out that the Legislature gave

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W hat do you do when ...

By Jackie Spoto Bircher, Staff Attorney

... an angry parent comes on school campus and becomes extremely disruptive?

There are times that our administrators want to ask or tell someone to leave school property, but they are unsure whether they need law enforcement's authority to do so. Occasionally the person told to leave asserts that school personnel have no authority to make them leave, as if a school were public property open to all.

So what authority do administrators possess to tell someone to leave the school grounds? Pursuant to section 810.097, Florida Statutes (2002), school principals and their "designees" (usually assistant principals but others also are sometimes designated) have the authority to tell any person that he or she cannot come on school grounds or that he or she must leave school grounds. We call this a "trespass warn-

ing." If that person does not comply, then that person is trespassing, a first-degree misdemeanor. Further, anyone who enters or remains on school property but "does not have legitimate business on the campus or any other authorization, license or invitation" is also trespassing, as are suspended or expelled students who remain on school grounds.

Although the law does not require that trespass warnings be in writing, the best practice is to give the person a written warning that they are not allowed on the campus. The area directors, school attorneys and school police all have copies of trespass warnings for principals to use. Generally, principals should consult with their area superintendents or directors if they have given, or intend to give, such a warning.

So what happens when a person



does trespass despite the warning? Technically, the principal or designee has the authority under section 810.097, Florida Statutes (2002), to take a trespasser into "custody" and detain that person until law enforcement can arrive. As a practical matter, we strongly recommend that a principal wait for law enforcement to arrive.

As everyone knows, our school personnel are careful about whom they allow on school grounds. We expect that all visitors will sign in at the office, and many of our school properties are fenced in order to help keep out unauthorized visitors. We also expect our visitors to behave. When they don't, they can be required to leave. ■

Dear John (Continued from page 2)

an extensive list of the types of information that would constitute a student record. Included on that list are "level of achievement records, including grades and standardized achievement test scores."

If that is not enough to convince anybody that the FCAT test booklet, answer sheet and answer key are student records, the court stated that the definition of "records and reports" also includes:

"... any other evidence, knowledge, or information recorded in any medium, including, but not limited to, handwriting, typewriting, print, magnetic tapes, film, microfilm, and microfiche, and maintained and used by an educational agency or institution or by person act-

ing for such agency or institution."

The court ruled that parents have a right of access to such records because the statute states that parents "shall have the right, upon request, to be shown any record or report relating to such ... student maintained by any public educational institution." Not only is there a right to access, under Florida law, parents have a right to copies of their student's records.

Additionally, the state statute gives parents a right to challenge the accuracy of the content of any record or report on a student. If parents are given only their child's answer sheet, they have no way to exercise the right to challenge the accuracy of the scores given by the state. Parents must have access to the test booklet and answer key in order to exercise the right to challenge the accuracy of the records. For all the parents know,

the state may have selected the wrong answer to a question or there may have been more than one right answer. News reports of successful challenges to SAT questions are not uncommon.

The state is pursuing the appeal because if parents have a right to copies of the test booklets and answer keys, it could cost the state millions of dollars to produce a new test each year. On the other hand, if students are going to be denied promotion from third grade because of the test or are being denied graduation for not passing the test in 10th grade, parents should have a right to see if the answer key is correct and if their child's test was graded correctly.

The dispute probably will be decided by the Florida Supreme Court. Stay tuned. ■

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MILITARY RECRUITERS

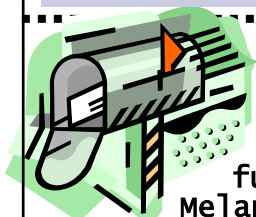
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Notification of Rights Concerning Educational Records. Our School Board decided not to include addresses and telephone numbers as part of the information it considered as "directory." The reason for that was to avoid being placed in a position of having to provide lists of students' addresses and telephone numbers to commercial enterprises for solicitation purposes. Unfortunately for military recruiters, that meant they did not have ready access to our students.

That changed with the enactment of the No Child Left Behind Act in January 2001. The No Child Left Behind Act requires that a school district provide military recruiters upon request "access to secondary school students' names, addresses and telephone listings." The act gives the same right to institutions of higher learning. As with the case of directory information under FERPA, districts must notify parents that they have an option to request that the district not release such information to military recruiters or institutions of higher learning, and the district must honor that request.

So, notwithstanding our district's decision not to include addresses and telephone numbers as part of "directory information," the district now must release the names, addresses and telephone numbers of students to military recruiters and institutions of higher learning upon their request. Parents were notified in the "**Code of Student Conduct**" distributed at the beginning of the school year that the district will honor their request not to release such information. This notification was included in the annual FERPA notification concerning directory information. Schools should be careful to keep track of any objections by parents so as to not release addresses and telephone numbers that remain confidential.

While the district may have to release this information to military recruiters and institutions of higher learning, it is still not available to commercial enterprises that may want to solicit students' business. ■



Please send comments
or suggestions for
future articles to
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Discrimination in the Workplace

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shows hostility toward an individual because of his/her race, color, religion, sex, age, national or ethnic origin, political beliefs, marital status, disability, sexual orientation, physical attributes, personal attributes or social and family background or that of his/her relatives, friends or associates, and that:

1. has the purpose or effect of creating an intimidating, hostile, or offensive environment;
2. has the purpose or effect of unreasonably interfering with an individual's performance;
3. otherwise adversely affects an individual's education or employment.

Examples of discriminatory and harassing conduct include, but are not limited to, epithets, slurs, negative stereotyping or threatening, intimidating or hostile acts, or written or graphic materials that denigrate or show hostility toward an individual.

When employees feel they have been harassed or discriminated against by employees, they should report the situation to their immediate supervisor, the Office of Professional Standards or the Office of Equal Opportunity. Students who are victims of harassment by other students or employees should report the situation to their teacher, counselor, assistant principal or principal.

Complaints will be investigated in a fair and impartial manner. No retaliation against individuals who file complaints in good faith will be tolerated. Substantiated complaints against employees will result in disciplinary action per **School Board Policy 8.25, Employee Disciplinary Guidelines**. ■