Pinellas County School Board Attorney's Office

Legally Speaking

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Use of Video Tapes in the Classroom

By Jim Barker, Administrator, Office of Professional Standards

From time to time our office receives complaints about teachers or substitute teachers using videos in class inappropriately or videos that contain inappropriate content. There are strict guidelines regarding the showing of videos in classrooms. Video tapes lawfully purchased by schools and marked ***"FOR HOME USE ONLY"*** may be used for classroom instruction. However, videos and other multimedia used in schools ***must be incorporated into the curriculum*** as part of the teaching activities of the program or course involved. **They *may not* be used for entertainment, reward, behavior modification purposes, or as a "time filler."**

Extreme care should be used in regard to the ratings of movies or television programs. Movie ratings of ***X, NC17, R, PG or PG13***, and television programs with a rating of ***MA, 14 or PG*** may not be used unless the principal approves the content and communicates the educational purpose to the community. If films hav-

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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.

Out With the Old — In With the New

By John W. Bowen, School Board Attorney

Prior to July 2002, the part of Florida Statutes dealing with education laws entitled "The Florida School Code" was contained in Chapters 228 through 246. In the 2002 session of the Legislature, "The Florida School Code" was reorganized, renumbered and renamed. The Code is now known as the "Florida K-20 Education Code" and is contained in Chapters 1000 through 1013 of Florida Statutes. This means all of the citations to Florida Statutes in the School Board Policy Manual must be converted from the old "Florida School Code" to the new "Florida K-20 Edu-

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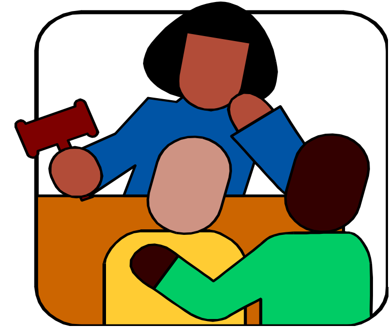
What's So Special About Special Ed.?

Part VI — Due Process Hearings

By Marcia MacKenzie, Supervisor, Exceptional Student Education Compliance and

John W. Bowen, School Board Attorney



Prior to the enactment of the Education of All Handicapped Children Act of 1975 (now known as the Individuals with Disabilities Education Act or IDEA), parents of students with disabilities who had disputes with the school district about the education being provided to their child resolved those disputes the same way as any other parents.

They first would try to resolve the problem at the school level by talking to the teacher and principal. If not successful there, the parents would progress to the district level up to the Superintendent. If still dissatisfied, the next step would be to the School Board. Finally, parents always could resort to the courts if they felt their legal rights were being violated.

Now, under IDEA, parents of students with disabilities have a more formalized (and costly) way of resolving disputes concerning the provision of (or a perceived refusal to provide) appropriate educational services to their child. Parents of students with disabilities have a right to make a written request for a due process hearing before an impartial administrative law judge (ALJ) on any dispute relating to the identification, evaluation or educational placement of the student or any matter concerning the provision of a free appropriate public education (FAPE) to the student.

For example, if the district is educating a student with autism in a full-time classroom for students with autism and the parents want the child educated in a regular classroom, the parents can request a due process hearing if the district refuses to place the child in a regular classroom. Even though the student's behaviors in the full-time classroom are so disruptive that the teachers and district special education staff believe the student would be even more disruptive in the regular classroom, the parents are entitled to have the dispute settled in a due process hearing.

The hearing is presided over by an ALJ employed by the Division of Administrative Hearings in Tallahassee who is not affiliated with the Department of Education. It is a trial in which evidence is introduced by both the school district and parents to support their positions.

Parents have the right to be represented by counsel at their cost, confront and cross-examine witnesses, compel the attendance of witnesses with the use of subpoenas and obtain a written transcript of the hearing at no cost.

At least five business days before the hearing, both sides must disclose to the other side the evidence they intend to introduce at the hearing or the evidence cannot be introduced. The hearing usually involves testimony of experts giving their opinion as to what is appropriate for the particular student.

At the end of the hearing, both sides usually file briefs urging the ALJ to rule in their favor. In our example with the student with autism, the ALJ then will enter a final order deciding whether or not the child should be educated in the regular classroom. The decision of the ALJ must be made within 45 days of making the written request for the hearing.

The decision of the ALJ is final except that either party may appeal the decision by filing an action in state or federal court. The court will accept and review the record of the hearing from the ALJ and shall hear additional evidence at the request of either side. The decision of the court then may be appealed by either side to the appropriate court of appeals. The decision of the appellate court then may be reviewed by the United States Supreme Court or the Florida Supreme Court, depending upon in which court system the initial appeal was filed.

Until a final decision is reached and there are no further appeals, the child must remain in the current educational placement unless the parents agree otherwise. This is called the "stay put" requirement. In our example, the child would remain in the full-time classroom until a final decision is reached. The "stay put" requirement would be a problem if the child had been in the regular classroom and had become disruptive and the parents refused to agree to place the child in a full-time classroom.

These proceedings are extremely expensive for both sides. Parents, if they prevail, can recover their costs and attorney's fees. The school district, however, is not allowed to recover its costs and attorney's fees if the district prevails.

In the next article we will address issues involved in changing the educational placement of a student with a disability. ■

How Much Time Do I Have to Respond to a Public Records Request?

By Jackie Spoto Bircher, Staff Attorney

As most people are aware, under Chapter 119, Florida Statutes, most school board records are considered public records, and as such, have to be made available to any member of the public to review. Although there are some records that are not subject to disclosure under the public records laws (*e.g.* student records), every school and department in this school system maintains records that qualify as public records.

One question many people in the school system ask is how quickly they must produce public records. Section 119.07, Florida Statutes (2002) states that the custodian of the records must produce the record "at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record or the custodian's designee."

So what is a reasonable time? According to the Florida Supreme Court it "is the limited reasonable time allowed the custodian to retrieve the record and delete those portions of the record the custodian asserts are exempt."

What is an unreasonable time? According to other cases, any automatic delay, such as a 10-day delay to notify affected employees their records will be inspected, is an unreasonable time.

Does this mean that when you are a custodian of public records you must drop everything you are doing the second you receive a request in order to respond to it? No. A principal who receives a public records request at 9 a.m. on the first day of FCAT testing does not have to put everything she or he is doing on hold in order to immediately respond to the request. The word "reasonable" was placed in the public records law to allow for the individual circumstances to be considered at the time of each request.

The best practice is to generally

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Did you know?

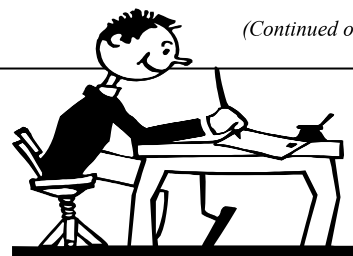
"Public records" is defined in section 119.011 (1) Florida Statutes (2002) as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."

Dear John ...

Q. In response to the article "What Does Your John Hancock Represent?" in the last issue, does signing the individualized education program (IEP) make the person signing legally responsible for meeting the goals and providing the accommodations contained in the IEP? I have been telling students in the past that signing the IEP only means that I attended the meeting. Was I wrong?

A. You are not wrong. As pointed out in the previous article, a person signing an IEP is acknowledging his or her presence and input at the IEP meeting. Signing the IEP does not make a person legally responsible for meeting the goals contained in the IEP. We cannot guarantee results.

We **are** responsible for delivering the services and accommodations specified in the IEP. As pointed out in a previous article, "What's So Special About Special Ed.?, Part V — The Individualized Education



Program (IEP)" (Volume III, Issue 3, page 2), the IEP guides the delivery of special education and related services. It is an extremely important document, and each person providing services to the student should be familiar with it. Failure to implement its provisions as written could constitute an unauthorized change in the IEP and could be considered a violation of the Individuals with Disabilities Education Act. An employee failing to follow the IEP could be subject to discipline. ■

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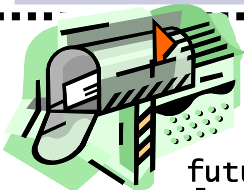

Please send comments or suggestions for future articles to Melanie Davis at davisme@pinellas.k12.fl.us.

Out With the Old ...

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cation Code." Also, any forms or other documents that cite to Florida Statues must be converted.

To help with converting the citations from the old to the new, the Legislature developed a tracing table and the Palm Beach County School Board Attorney's Office added hyperlinks to both the old and new statutes. You can access the tracing table by going to the Pinellas County Schools Legal Department web page at www.pinellas.k12.fl.us/attorney and then scroll to the bottom for the hyperlinks to the tracing tables. You also can access the table by clicking on http://www.palmbeach.k12.fl.us/policies/tracing.htm. ■

How Much Time Do I Have ...

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review the request when you initially receive it and then to communicate to the person making the request how long you expect it will take you to retrieve and prepare the records. We recommend that discussion take place within 24-48 hours of receiving the request, although if the person requesting the records indicates that it is urgent, you should have that discussion sooner. Most of the time, the person requesting the information will agree with you on a reasonable time frame to produce the records, taking into account your schedule, the volume of records involved and the deletions to be made of exempt information.

Because courts can impose criminal and civil penalties for violations of the public records law, it is important to be aware of the requirements of the law. A school board member in another district actually was removed from office and prosecuted criminally.

In future articles we will discuss several other issues involving Florida's Public Records Act to help you avoid problems with the law. ■

Use of Video Tapes in the Classroom

(Continued from page 1)

ing a rating other than **G** are used in the classroom, parental permission forms signed by the parent prior to the showing are suggested.

The use of rented videos is also subject to regulation. Rented video tapes bearing a warning notice ***"FOR HOME USE ONLY"*** only can be used in the classroom when the rental agreement or license specifically allows it. The best safeguard is to avoid renting multimedia for the classroom or to rent from sources that indicate in their rental agreements that public performance rights have been granted for instructional use in an educational setting. **If you do not know what the license allows, do not use the video. A good source of information in this area is your media specialist or Bonnie Kelley from our media department at 588-6345.**

The use of taped television and cable programs is subject to the principal's approval and monitoring as well as copyright statutes. Live broadcasts are also subject to the principal's approval and monitoring.

For specific information, please refer to the brochure *Controversial Material Policy and Guidelines* published August 2003 by the Division of Curriculum and Instruction. This brochure can be accessed on the Pinellas County Schools' Intranet site at pcs.pinellas.k12.fl.us. You also can find valuable information regarding this topic in the *Pinellas County Schools Copyright Guidelines for Educators & Staff* developed by the Office of Library Media/Technology. You can access this document on the Pinellas County Schools' Internet site at http://www.pinellas.k12.fl.us/LMT. ■