

# Legally Speaking

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VOLUME IV, ISSUE 3

Spring 2004

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**PINELLAS COUNTY SCHOOLS**

*Pinellas County Schools is an equal opportunity institution for education and employment.*

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## Public Records

### Part III—Continuing Request

By John Bowen, School Board Attorney

Recently, an employee made a request to a department head for copies of the minutes of staff meetings that have been held in that department. To the extent that minutes of the staff meetings were kept, the employee was entitled to copies of them as they are clearly "public records" (see definition on page 4). The employee, however, went on to request copies of minutes of future meetings of the staff members whenever those meetings would occur. The employee is not entitled to the minutes of future meetings for two reasons.

First of all, the minutes of future meetings do not fall within the definition of public records as contained in section 119.011 (1) Florida Statutes (2003). That definition includes records that are "made or received pursuant to law or ordinance or in connection with the transaction of official business." The minutes of future staff meetings do not exist yet so they have not been "made or received" and, therefore, are not public records.

Moreover, section 119.07 (1) (a) Florida Statutes (2003) requires that "every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so." The minutes of future meetings are not in the custody of the department head because they do not exist.

*(Continued on page 4)*



### 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.*

## WE Need Your Help

Our school district has 147 schools and centers, and approximately 17,770 employees. When the district is involved in litigation, it is important the Legal Department know if a party suing us is asking for information about a case so we can represent the district effectively. If you receive a subpoena requiring you to testify at a deposition or a hearing, or any request for you to produce documents or records for an administrative or judicial proceeding that involves the school district or involves an incident in which a school district employee was on the job, please call our paralegal, Betty Turner, at 588-6247.

## Policy Alerts

### New Policy on Fraud

By Tom Wittmer, Staff Attorney

The School Board adopted new **Policy 7.34, Anti-Fraud**, on Aug. 19, 2003. The purpose of this policy is "to establish certain principles and expectations for the school district in order to prevent fraud, investigate and provide consequences for engaging in any manner of fraud and to heighten awareness of possible fraud."

What does the term "fraud" mean? The policy defines fraud to include but not be limited to "knowingly misrepresenting the truth or concealment of a material fact in order to personally benefit or to induce another to act to his/her detriment." It then gives a list of examples, such as

- falsifying or altering district documents (e.g., claims for payment or reimbursement, leave records, financial records, student records, maintenance records, health and safety reports) without authorization;

- accepting or offering a bribe, gift or favor to influence an employee's decision-making;
- disclosing the district's purchasing or bidding activities to give a person or business an unfair advantage in the bidding process;
- causing the district to pay excessive prices or fees without justification; and
- unauthorized destruction, theft, tampering or removal of records, furniture, fixtures or equipment.

The policy prohibits any kind of fraud, whether by district staff members, outside support organizations, vendors, contractors, volunteers, outside agencies doing business with the School Board or any other person in a position to commit fraud on the School Board. Any staff member who knows or suspects that an act of fraud is occurring is required to report it immediately to the Office of Professional Standards (OPS).



That office will decide whether an investigation is warranted. The policy provides for employees to receive training about fraud and for departments to self-assess risks to identify areas in which fraud may occur.

The new policy gives valuable guidance for employees and is a strong statement that our district "will not tolerate fraud or the concealment of fraud." ■

### Teacher Removal of Student From Class

By Tom Wittmer, Staff Attorney

In 1996, a new Florida statute was enacted as one way to help teachers maintain effective discipline in their classrooms. The law, now at section 1003.32(3)-(7), Florida Statutes (2003), permits a teacher under certain circumstances to remove a student who is "disobedient, violent, abusive, uncontrollable or disruptive" from the class.

In order to remove a student, the teacher first must determine that the student's behavior interferes either with the teacher's ability to communicate effectively with the students in the class or with the ability of the student's classmates to learn. When a teacher removes a student for one of these reasons, the principal can

take action to discipline the student, but the principal may not return the student to that teacher's class without the teacher's consent unless the school's "placement review committee" determines that such placement is the best or only available alternative.

The placement review committee is composed of at least three members: two teachers, one selected by the school's faculty and one selected by the teacher who removed the student, and a member of the school's staff selected by the principal. The principal may appoint additional members of the committee. The teacher who removed the student cannot be on the committee. If the teacher will not agree that the student may return to his or her class,

and the committee finds that the teacher's class is not the only or best available alternative, then the student may not return to that class, and the principal must move the student to another classroom. The committee must decide on placement within five (5) school days after the teacher's removal of the student from the class. If the committee's decision is to return the student to the teacher's class, then the teacher may appeal that decision to the superintendent. The superintendent's decision is final.

The School Board has adopted **Policy 4.24, Removal of Students from Class**, to implement the provisions of section 1003.32 (3)-(7) Florida Statutes (2003). ■

# Beaucoup Personnel Changes

By John W. Bowen, School Board Attorney

**T**here have been several recent personnel changes in the Legal Department and Office of Professional Standards.

Last September, Jackie Spoto Bircher, staff attorney, took maternity leave to bring her son William into the world. Mother and son are doing fine, so much so that Jackie has decided not to return to work so that she can devote full time to her motherly duties. Jackie was with us a little more than 4 1/2 years. We will miss her.

Tom Wittmer, assistant school board attorney since Jan. 15, 2001, decided he wanted to return to the position of staff attorney, the position he held in Alachua County before coming here. Dr. Hinesley agreed, so Tom is now staff attorney.

We advertised the vacancy in the

assistant school board attorney position and, Jim Scaggs applied. Jim was assistant school board attorney for two years starting in 1999. With Jim back, the Legal Department has more than 85 years of legal experience (79 of them in public school law).

Jim Lott is the newest administrator in the Office of Professional Standards (OPS). Jim has been with the school system for 29 years and comes to us after spending the past 10 1/2 years as principal of Tyrone Elementary School. Jim got his bachelor's degree in elementary education and master's degree in administration and supervision at the University of South Florida. Jim is a product of the Pinellas County school system, having graduated from Northeast High School a long, long, long time ago.

Jim Lott's most difficult task will be

filling the shoes of his predecessor, Jim Barker, who has retired after 32 years with the system. Jim had been an outstanding OPS administrator for the past 15 years, handling more than 10,000 investigations of alleged employee misconduct. During that time he has seen almost everything imaginable. Jim agreed to do one last article for *Legally Speaking* which can be found on page four.

Finally, after 10 years as an OPS investigator, Bob Franz retired. Bob had 18 years with the school district, and we hear he is thoroughly enjoying retirement. Replacing Bob is Rick Stelljes who comes to us from the St. Petersburg Police Department. Rick retired from that department as Assistant Chief of Uniform Services Bureau after 28 years of service. ■

## Dear John ...

**Q.** In the Spring 2003 issue of *Legally Speaking* in the answer to a question, you told us about a court decision giving parents access to the FCAT test booklets and answer sheet of their child. You said the case was on appeal. What happened?

**A.** In an opinion filed November 6, 2003, the 1st District Court of Appeal reversed the trial court's decision giving parents access to the FCAT records and test booklets. The court reasoned that the definition of student records in the statute specifically included "standardized achievement test scores, intelligence test scores, aptitude test scores, and



psychological test scores, but conspicuously makes no mention of the test instruments themselves." The court ruled that failing to specifically include the test instrument in the definition of student records means the legislature did not intend to include it.

The court also said that "it was required to give deference to the [Department of Education's] interpretation of the statute, because [it] is the agency charged with enforcing the school code." The court ruled that because the Department's interpretation that the test

instrument was not a student record was "within the range of possible and reasonable interpretations," the trial court should have accepted it.

The parent of the student did not appeal the decision to the Florida Supreme Court so the decision is final and binding throughout Florida unless another District Court of Appeal reaches a different conclusion. In that event, the Florida Supreme Court will resolve the conflict.

Until that time, parents will have to trust the state when the state informs the parent that their child has to be retained in the third grade or cannot graduate because he or she did not pass the FCAT. They will have to trust that the state had all the right answers to all the questions and graded their child's test correctly without ever making a mistake. ■

**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](mailto:davisme@pinellas.k12.fl.us)

**Legal Staff Members**

- John W. Bowen, School Board Attorney
- James L. Scaggs, Asst. School Board Attorney
- Tom L. Wittmer, Staff Attorney
- Betty Turner, Paralegal
- Suzanne Cortina, Legal Secretary
- Diane Luisi, Legal Secretary
- Melanie Davis, Clerk Spec II - Newsletter Publisher

**Public Records ...**  
*(Continued from page 1)*

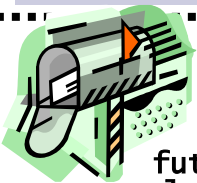
Florida's Attorney General has taken the same position and ruled that a public body does not have to comply with requests for records that will be created in the future. Such "continuing or standing requests" for public records are not valid public records requests. ■

**"Public records"** are defined in section 119.011 (1) Florida Statutes (2003), 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.*"

**Did you know ...**

a workplace "prank" could result in the prankster being charged with a felony?

A student at Jennings Middle School in Hillsborough County was charged with a felony under section 501.001(2), Florida Statutes (2003) for spiking a teacher's drink with window cleaner. That section prohibits tampering with any consumer product with reckless disregard for the risk to another person. Think twice before playing what you think is a "prank." ■



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



**Parting Comments:**

By Jim Barker, Retired Administrator, Office of Professional Standards

**Remember,**

**Be Careful Out There.**

