Pinellas County School Board Attorney's Office

# Legally Speaking



VOLUME IV, ISSUE 4 School Year End 2004

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PINELLAS COUNTY SCHOOLS

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



# *School Volunteers:*

## *Register or lose the benefit*

By Tom Wittmer, Staff Attorney

One of the most important ways that citizens can become involved in our schools is by volunteering their time and services. A "school volunteer" is an unpaid person who functions under the sponsorship of the School Board and at the direction of the principal or Supervisor of Community Involvement. Volunteers assist teachers or other members of the school staff in many ways. Some examples of volunteers are coaching assistants, band/choral boosters, athletic boosters, cheerleading boosters, PTA officers and any unpaid program assistants.

School volunteers must register with the Community Involvement Office. The registration process includes a background check on all potential volunteers. In some cases, fingerprinting also may be required. This process protects both the volunteer and the board employee who the volunteer is helping. Volunteers also must sign in and out when volunteering on school board property. See Policy 6.14, *School Volunteer Program.*

Registered volunteers are covered by workers' compensation provided by the

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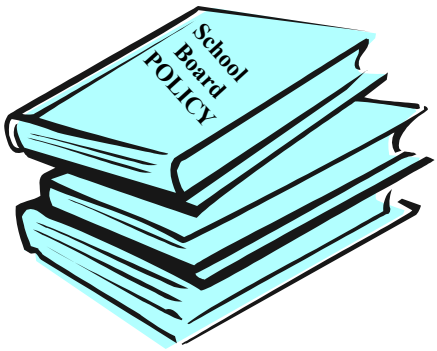
***Mission Statement***

*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.*




# *Policy Alert:*

## New Software Policy

By Judy Ambler, Supervisor of Instructional Technology and Tom Wittmer, Staff Attorney

In 2002 the School Board approved a policy on the use of its computers and other electronic resources. See *Legally Speaking,* Vol. III, Issue 2, *Using Electronic Resources* and Policy 7.33, *Use of Electronic Resources*. That policy stated that it is a violation of copyright laws to "load software onto a district computer without a license authorizing the use of that software on that computer." To provide more specific guidance

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# *Where Did All These ESOL Training Requirements Come From?*

By Jim Scaggs, Assistant School Board Attorney

Professional staff, including teachers, guidance counselors and administrators, have great demands placed upon them for in-service or other training. Included in these demands are requirements for what has been labeled English for Speakers of Other Languages (ESOL) training. Some of those for whom training is mandated have wondered about the source of this requirement.

On Aug. 14, 1990, a federal court in Miami entered an order adopting a settlement agreement between representatives for students who were not English language proficient. Sometimes referred to as the League of United Latin American Citizens (LULAC) agreement or more frequently called the Multicultural Education Training and Advocacy, Inc. (META) agreement, this order required that the Florida Department of Education (DOE) mandate certain things regarding training and certification.

In implementing the META agreement, DOE adopted rules requiring very specific content hours of in-service training for teachers in "basic subject areas." In-service or college credit requirements are greater for "basic" subject teachers in language arts, mathematics, science, social studies and computers. Other areas, such as music, art or physical education, also are covered. All teachers of ESOL students (even one student) must satisfy these requirements.

Each year the district is required to "track" certification of teachers who have ESOL students in their classes. This tracking is required even if only one such student is in a class. The tracking must be reported to DOE along with information on each teacher's prior ESOL training or progress toward fulfilling required in-service hours or work toward endorsement.

In 2003 a new Stipulation was filed in federal court. Specifically, the new Stipulation provides that DOE require school administrators and guidance counselors obtain 60 hours of in-service training or continuing education in ESOL approved courses within a three-year period from the effective date of the Stipulation. Any school administrators and guidance counselors hired after the effective date of the Stipulation shall have three years from the date of hire to meet this requirement. DOE informed the district in March 2004 that this requirement applies to all public school administrators and school guidance counselors *whether or not the school has any ESOL students*. Past in-service training or credit can be used to meet the requirements.

Specifically, the new Stipulation provides that DOE require school administrators and guidance counselors obtain 60 hours of in-service training or continuing education in ESOL-approved courses within a three year period of the effective date of the Stipulation.

At this point, some may be asking "So what?"

First, the district is legally required to enforce the standards, and all personnel are required to meet the requirements of the Stipulation .

Second, each year the district is subject to an audit of student enrollment including appropriate certification of teachers. In certain areas, dollars are recovered by the state if teachers do not have correct certification. For school year 1998-99, the district had audit findings relating to certification that cost $146,032, at least one-third of which could be attributed to lack of ESOL certification or in-service training. For the 2001-02 school year, the cost was approximately $240,296 for ESOL alone. Due to the lost revenue, monitoring of certification in the area of ESOL has been intensified.

Fortunately, many staff members have taken the training required while others are working toward it. There are a variety of ways to satisfy the requirements. The district has recognized the burden that such training creates and has developed or adopted techniques that make the training available with the greatest control placed in the hands of individual staff members.

When this issue comes up in your school or for you personally, please remember that "shooting the messenger" may make you feel better, but the requirements still will remain. Failure or refusal to take the required training is being monitored and could result in disciplinary action. ■

# Here Come da Quasi-Judge

**By Jim Lott, Administrator, Office of Professional Standards**

Each year the Office of Professional Standards (OPS) receives approximately 1,700 internal and external complaints about school district employees. The vast majority of the complaints are unfounded; however, each one must be investigated. OPS is responsible for initiating the investigation into the complaints. Sometimes the investigation results in a recommendation for suspension without pay or termination of employment.

Many employees do not realize that neither site-based supervisors, OPS administrators nor the Superintendent have the authority to suspend an employee without pay or dismiss an employee. Only the School Board has that authority.

When employee discipline requires a decision by the School Board, members of the Board are acting as judges. When acting as judges, board members have to evaluate the case based solely on the evidence, arguments and other matters in the official record. They cannot have conversations with the employee or others who may be for or against the recommended discipline.

In a criminal or civil matter, a judge never would have a private conversation with one of the litigants before the case was heard or the judge might have to recuse him/herself (i.e. disqualify him/herself from sitting on the case). School board members are held to the same standard when they are acting in a "quasi-judicial" role.

In order to receive a fair and impartial decision, employees who are being recommended for disciplinary action by the Board will be instructed by OPS not to communicate directly or indirectly with board members about their personnel issues prior to the time the matter is presented for board action. Any board member who receives an unauthorized communication concerning a pending personnel matter is required to report it. If board members cut short a conversation once they realize it involves a matter that may come before them sitting in a "quasi-judicial" manner, they are not being rude,

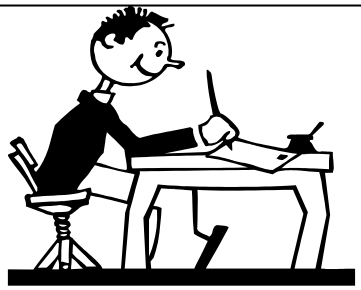
they are complying with the law.

On matters of public concern unrelated to individual employee actions, employees are welcome to contact members of the School Board. Speaking to your elected officials about matters of public concern is your First Amendment right unless the elected official is acting in a judicial role dealing with a personnel issue.

Very few school district employees will hear the words "Here comes da quasi-judge." (Apologies to Flip Wilson.) However, if you are told that you cannot contact a board member about your personnel issue, follow the directive. Failure to do so may be considered insubordination and lead to further disciplinary action. ■

# Dear John ...

**Q.** Is it permissible for employees to wear campaign buttons at work to show support for their candidate?



**A.** This question was addressed in a previous *Legally Speaking* article [see *Politics in the Classroom and Workplace*, Vol. III, Issue 4]; however, because the election season is upon us, it is appropriate to visit the issue again.

School Board policy is clear. Policy 8.07 (3)(b), *Political Activities*, provides that "Employees are prohibited from engaging in political activities on school board premises during duty hours." Wearing a campaign button or T-shirt supporting a particular candidate or political position is considered "engaging in political activities" and employees are prohibited by Board policy from wearing them at work. **This applies to all employees, but not to non-employee visitors.**

The prohibition applies to any political activities. For example, an employee who is running for political office should not be introducing him/herself to others in the workplace as a candidate for a particular office. Also, employees should not use the e-mail system to solicit support or opposition for a candidate or cause. That would be a violation of Policy 7.33, *Use of Electronic Resources*, as well as Policy 8.07, *Political Activities.*

As previously stated, no employee has a job description that includes "trying to convince others to vote for a particular candidate or support a political position." ■

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

James L. Scaggs, Asst. School Board Attorney

Thomas L. Wittmer, Staff Attorney

Betty Turner, Paralegal

Suzanne Cortina, Legal Secretary

Diane Luisi, Legal Secretary

Melanie Davis, Clerk Spec II - Newsletter Publisher

### *Policy Alert*
***(Continued from page 1)***

about how to handle software and due to continuing concerns about software piracy and possible copyright enforcement actions by software manufacturers [see *Legally Speaking,* Vol. II, Issue 1, *Software Pirates - Avast and Desist!* and Vol. II, Issue 2, *Software Pirates the Sequel: Beware of Audits*], the Board on April 13, 2004, approved new Policy 7.36, *Software Management*.

The purpose of the new policy is to prevent the unauthorized use of software on district-owned computers. The new policy prohibits:

- making unauthorized copies of software;
- installing or using on district-owned computers, software for which the district lacks the appropriate license;
- making an unauthorized transfer of software licensed to the district;
- using personally owned software on district computers; or
- downloading software without approval of the site administrator.

The policy permits a personally owned software license to be donated to the district and provides for software to be transferred from one work site to another. Every work site is required to maintain a record-keeping system to document and store purchase orders and license agreements, together with the original software.

Records for software that is licensed districtwide will be maintained in the central office and need not be duplicated at each work site.

The new policy is effective now for all newly purchased or installed software. Software existing prior to April 13, 2004, must have documentation in compliance with the policy by June 30, 2006, or be removed.

If you want to know more, go to the PCS Intranet (http://pcs.pinellas.k12.fl.us) in the area devoted to Computer Policies and FAQs. ■

### *School Volunteers …*
***(Continued from page 1)***

School Board. This is important because if an unregistered volunteer is injured while volunteering at school, the School Board is not liable for the injury unless the Board's negligence caused the injury.

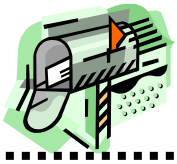
In a 2001 *Legally Speaking* article [See *Legal Factoid*, Vol. I, Issue 2], it was stated that a registered volunteer is entitled to the same liability protections (*i.e.,* immunity from being sued for simple negligence) as a board employee. While that was correct at the time, in 2003 the Fourth District Court of Appeal, in the case of *Campbell v. Kessler*, interpreted The Florida Volunteer Protection Act, section 768.1355, Florida Statutes (2003), to mean that volunteers do not have the same immunity from being sued as do board employees. The court ruled that volunteers have no civil liability for any act or omission that results in personal injury or property damage, but only if

- the volunteer is acting in good faith and as an ordinary reasonably prudent person would have acted in the same or similar circumstances; and
- the injury or damage was not caused by the volunteer's wanton or willful misconduct.

In other words, the volunteer will not be liable unless the volunteer is negligent.

Although this Act would not protect the volunteer from liability for ordinary negligence, **registered** volunteers in this district are covered by the School Board's insurance program for damages up to $100,000 per claimant or $200,000 per occurrence.

Do not risk losing these protections and insurance benefits. Make sure all volunteers are registered. ■



**Please send comments or suggestions for future articles to Melanie Davis at davisme@pcsb.org**