

Legally Speaking

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Inside this issue:

<i>Access to Student Records Through Subpoena</i>	2
<i>E-mail/Fax disclaimer</i>	2
<i>She's a Grand Old Flag</i>	3
<i>Dear John — No Child Left Behind Act</i>	3



PINELLAS COUNTY SCHOOLS

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Public Records

Part IV—Social Security numbers as public records?

By John Bowen, School Board Attorney

With all of the stories going around about identity theft as a result of obtaining Social Security numbers, you would think your government would do everything that it could to protect Social Security numbers. If you thought that, you would be wrong!

Last year the *Sarasota Herald Tribune* made a public records request to the Florida Department of Education (DOE) for two state databases to research where high-quality teachers are assigned. One database showed how teachers performed on certification tests and the other showed where they were assigned to teach. The *Tribune* also requested Social Security numbers of the teachers to merge the two databases. DOE had the Social Security numbers as part of the teachers' certification files.

Initially, DOE released some Social Security numbers but then stopped. The *Tribune* sued. In June, a circuit court in Tallahassee ruled that the Florida DOE must turn over the Social Security numbers of all teachers to the *Tribune*. DOE is appealing that decision.

Why would a court issue such a ruling? Well, it seems that the legislature in the 2002 session enacted and the governor signed into law section 119.0721, Florida Statutes (2003). This new law in its first paragraph declares all Social Security numbers held by a governmental agency to be confidential and exempt from the Public Records Act, effective Oct. 1, 2002.



Actually, that was unnecessary. Section 119.07 (3) (x) Florida Statutes (2003) already provided that Social Security numbers are confidential and exempt from the Public Records Act.

The problem is that the legislature did not stop with just repeating an existing exemption. It created a huge exception to the confidentiality of Social Security numbers. The newly enacted section

(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.

Access to Student Records Through Subpoena

By Robin Tew, Supervisor, Records Management,
and Tom Wittmer, Staff 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. Except for “directory information” [see *Legally Speaking*, Vol. 1, Issue 2, p.3; Vol. III, Issue 2, p. 3.] the contents of student records generally may not be released to anyone outside the school without the prior written consent of the student’s parent or guardian.

However, the law provides some limited exceptions, and in those situations, the school is permitted or required to release information in a student’s records. One of the exceptions is when a subpoena duces tecum has been issued for the records. A subpoena duces tecum is a document issued under the authority of a court that compels a person to appear and produce something for the court. To be effective, a subpoena must be served on you by a person over the age of 18. The district’s *Student Records Manual* contains a detailed procedure for handling subpoenas for student records.

If you are served a subpoena for a

student record, first determine if the subpoena is from either a Florida court or federal court. If it is not, then the court does not have jurisdiction, and you should respond using the form letter C in the appendix to the *Student Records Manual*.

Second, determine if the student is either a current or recent student at your school for whom you have the student records. If your school does not have the records, locate the student on SASI, confirm the location by contacting the other school and then forward the subpoena to that school immediately. If you cannot locate the student on SASI, send the subpoena to the central records department. That department will respond.

If you have the student’s records, then determine what records the subpoena requires, and when and where they are to be produced. Many times you only are required to send copies of the records to an attorney’s office, or you may be required to personally appear at a hearing or deposition with the records. A subpoena must be very specific about what is required to be done.

A parent has a right to be notified about a pending subpoena for student records. A sample notice form is included in the appendix to the *Student Records Manual*. We recommend that you send the notice as soon as possible after receiving a subpoena but, in any event, at least ten (10) days before compliance with the subpoena.

The school district’s normal charge for making copies of documents is 15 cents per page for a single-sided copy or 20 cents for a two-sided copy. Calculate the cost of copies and send an invoice, stating that the copies will be provided upon receipt of payment.

If you receive a subpoena and do not understand how to comply with it, you may send a copy to the attorney’s office, and we will assist you.

Of course, both parents, whether married or not, have a “right of access” to their child’s school records, and either can receive a copy of a student record without using a subpoena, unless the school has a court order that prohibits the parent from having access to school records. See *Legally Speaking*, Vol. I, Issue 3, p. 3. ■

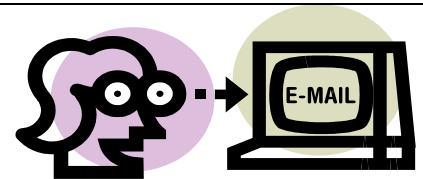
If you received this e-mail/fax by mistake, destroy it.

By John W. Bowen, School Board Attorney

It is very common to see confidentiality notices on e-mails and faxes. These notices tell you that the information contained in the e-mail or fax is confidential and privileged. They tell you that if you received the communication by mistake that you are not to disclose it to anyone else, you are to call the sender, and you must destroy the original. They want you to think that bad things will hap-

pen to you if you do not comply with the instructions.

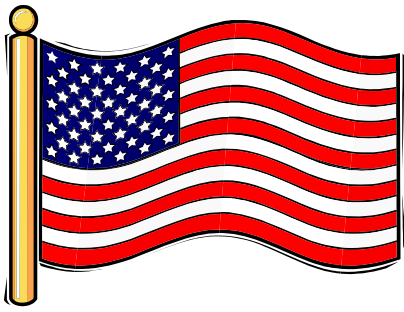
While such notices may make the sender feel better, they do not offer any legal protection should confidential information be sent inadvertently to the wrong e-mail address or fax number. If, for example, the parents request that the school fax a copy of a recent psychological report on their child and the school



dials the wrong number, the fact that there is a confidentiality notice on the fax cover sheet does not protect the school from responsibility for the wrongful disclosure. Once sensitive information is disclosed, the damage is done. You cannot put the toothpaste back in the tube once it is out.

School system employees should be extremely careful when sending

(Continued on page 4)



SHE'S A GRAND OLD FLAG!

By John W. Bowen, School Board Attorney

With all of the important issues facing the state, the Florida Legislature managed to devote some time in its 2004 session to fostering patriotism in public schools and the state university system. The legislature passed the Carey Baker Freedom Flag Act, named after a legislator who served in Iraq.

The Act requires that each public educational institution established by the Constitution and laws of Florida "display daily in each classroom the flag of the United States." The Act does not stop there. It goes on to require that the flag be at least 2 feet by 3 feet, be made in America and be properly displayed as provided in federal law.

Because the Act applies to educational institutions "provided or authorized by the Constitution and laws

of Florida," that means it technically applies to school districts, not individual schools, because individual schools are not established under Article IX of the state Constitution. It requires that each educational institution acquire the necessary flags to cover each classroom.

The legislature was sensitive to the huge cost of implementing such a program and did not want to be accused of creating another unfunded mandate, so it required that "the principal, director, or president of each educational institution" attempt for one year to secure the flags through donations or fundraising before allocating funds to purchase flags. Notwithstanding the confusing language, obviously the law is meant to apply to individual schools. Nevertheless, the district must attempt to comply with the requirements of the new law as best it can. Therefore, it will be the responsibility of the principal of each school to comply with the Act even though a school is not an "educational institu-

tion" as defined in the law.

While the Act provides that donations should be sought to fund the purchase of the flags, there is nothing in the law that actually requires that the flag be commercially produced. Displaying a flag that has been produced by students will constitute compliance as long as it meets the minimum requirements of size and is displayed in accordance with federal law. Federal law requires that a flag that is displayed against a flat wall must have the field of stars in the upper left-hand corner as you are facing the flag. The flag can be on poster board or any other material so long as it duplicates the stars and stripes.

Each classroom must have a flag displayed no later than Aug. 1, 2005. Whether securing donations to purchase commercially produced flags or using student talent and creativity to produce a flag, the time to begin is now. ■

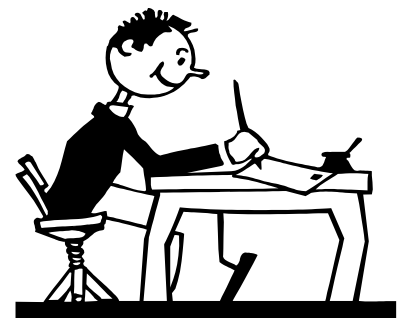
Dear John ...

Q. I have heard so much about the No Child Left Behind Act and its impact on public education. Could you explain what it is all about and what are we doing to comply with it?

A. In January 2002, President Bush signed into law the No Child Left Behind Act (NCLBA). The NCLBA is a massive statute of almost 700 pages in length so obviously I cannot give a complete answer to your question in a Dear John column; however, we plan to devote

most, if not all, of the next issue of *Legally Speaking* to a complete analysis and explanation of the NCLBA.

One of the major components of the NCLBA is the accountability system it creates for public schools. That system requires that schools make adequate yearly progress (AYP) with respect to student achievement and has a series of sanctions for schools that do not make AYP. We will explain that system in detail. Other aspects of



the Act that we will explore are the requirements concerning highly qualified teachers and paraprofessionals.

We hope that after you read the next issue we will have answered your questions. ■

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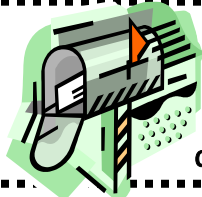
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Social Security numbers ...
(Continued from page 1)

requires that, upon receipt of a proper request, a governmental agency must give Social Security numbers to commercial entities "engaged in the performance of a commercial activity ... provided the Social Security numbers will be used only in the normal course of business for legitimate business purposes."

Legitimate business purposes include "verification of the accuracy of personal information received by a commercial entity in the normal course of its business; use in a civil, criminal, or administrative proceeding; use for insurance purposes; use in law enforcement and investigation of crimes; use in identifying and preventing fraud; use in matching, verifying, or retrieving information; and use in research activities."

When DOE received the request from the *Tribune*, it proposed legislation that would somewhat limit access to Social Security numbers. The new legislation that took effect July 1, 2004, provides that an agency that has Social Security numbers of individuals and is not the employer will maintain the confidentiality of the numbers but "only if the employee or the employing agency of the employee submits a written request for confidentiality."

"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."

The School Board has submitted a written request for confidentiality on behalf of all employees. That request was sent to DOE July 1, 2004. Even with the request for confidentiality, the statute still requires DOE to provide the last four digits of the Social Security number to a commercial entity making a proper written request.

The new legislation did not change the requirement that the employer (School Board) provide the full Social Security numbers of its employees to any commercial entity that makes a proper written request. Employees do not have the option to request that their governmental agency employer keep their Social Security numbers confidential.

Therefore, because of this new law passed by the Legislature in 2002, your complete Social Security number is still available to all commercial entities that make a proper written request to use the Social Security numbers in the normal course of business for legitimate business purposes. Say it isn't so! ■

If you received this e-mail/fax by mistake ...
(Continued from page 2)

confidential information by fax or e-mail. Double check the e-mail address or fax number before sending. When faxing, verify with the recipient that he or she is standing by to receive the confidential fax. Do not send a fax containing confidential information unless you know the receiving fax machine is secure. If possible, use the pony mail system or "snail mail" instead. Even then, make sure that any confidential documents are in a sealed envelope.

We also need to be worried about maintaining confidentiality on the receiving end. Schools routinely receive confidential information by fax. Personnel should be trained to not leave confidential faxes lying around. Student volunteers should not have access to the fax machine. Incoming faxes should be secured as quickly as possible. We owe it to our students to ensure that their right to confidentiality is not violated. ■