

# Legally Speaking

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**PINELLAS COUNTY  
SCHOOLS**

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

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## Personnel Files and Public Records

By James Scaggs, Assistant School Board Attorney (Retired)

While access to many public records may seem abstract, this article on access gets down-right personal because it relates to your own personnel file. Under section 1012.31(4), Florida Statutes (2004), your individual personnel file is broadly defined as

... all records, information, data or materials maintained by a public school system, in any form or retrieval system whatsoever, with respect to any of its employees, which is uniquely applicable to that employee whether maintained in one or more locations.

While you have a right to see everything in your personnel file, section 1012.31(3) Florida Statutes (2004), makes your personnel file subject to Florida's Public Records Act, thus giving the public access to your personnel file. Fortunately, exceptions are carved out for many personnel file materials, protections added to others and accessibility time limits applied to some materials.

For example, no public access is permitted to payroll deduction records, medical

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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.*

## Legal Department Personnel Changes

By Rachel Hitchcock, Stetson Law School Intern

Things are changing in the Legal Department. Jim Scaggs, Assistant School Board Attorney for the past year, announced his retirement effective Feb. 25, 2005. Jim has decided to start traveling around the country in his Volkswagen camper. While we will miss him, we wish him well with his new adventures. In the meantime, we are happy to have Tom Wittmer return to this position from the Staff Attorney position.

The Staff Attorney reports to the Superintendent and represents him in employee discipline cases and student expulsions and assists the School Board Attorney in providing general legal representation and advice to the School Board and school

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## PROSECUTIONS FOR TRUANCY — *Some Get Jail Time*

By Tom Wittmer, Assistant School Board Attorney, and Betty Turner, Paralegal

**F**lorida law requires that all children who are 6 years of age, who will be 6 years old by Feb. 1 or who are older than 6 years of age but who have not reached the age of 16 years must attend school regularly during the entire school term. Parents can comply with compulsory school attendance by enrolling their child in a public school; a parochial, religious or denominational school; a private school; a home education program or a private tutoring program.

Poor academic performance is associated with nonattendance at school. For this reason, schools are required to take an active role in enforcing school attendance laws. **School Board Policy 4.03, Attendance**, and the **"Code of Student Conduct," section (5)**, require that the parent of a student justify each absence of the student. The policy defines nine (9) categories of absences that are excused. All other absences are considered unexcused.

Absences can determine whether a student can receive credits in high school. **School Board Policy 5.11, High School Credit and Student Performance Standards**, requires that students demonstrate mastery of the course performance standards, based on Sunshine State Standards, in order to receive credit for the course. If a student has an excessive number of absences (10 or more in a school with six periods or five or more in a 4x4 school), then the student must take and pass the final exam in order to receive credit.

The law requires that the school principal or designee must contact the parent when a student has an unexcused absence. After five unexcused absences within a month, or 10 unexcused absences with a 90-calendar day period, the case will be referred to the school's child study

team (CST) to determine if early patterns of truancy are developing. The CST may schedule a meeting with the student's parent and take specific actions to address the problem.

A "habitual truant" is a student who has 15 unexcused absences within 90 calendar days, with or without the knowledge or consent of the parent. If the student will not comply with attempts to enforce school attendance, the parent or the Superintendent or designee may refer the matter to the case staffing committee.

The law also authorizes the Superintendent to file a truancy petition in circuit court. The Staff Attorney's Office has partnered with Donna Sicilian, Supervisor, School Social Work, and Barbara Jacobs, Assistant State Attorney, to prosecute truants. In our initial filing of cases last year we handled 35 cases. This year we already have taken 45 cases to court with approximately 35 pending petitions to file before the end of the school year.

Judge Irene Sullivan presides at the majority of the hearings. Students are ordered to attend school every day. In addition, the Court sometimes orders drug testing, shelter placement, curfews, counseling, removal of televisions and computers from bedrooms, and residential placement for drug problems. Often, the child is ordered to detention when he or she runs away from home or fails to abide by the Court's order. A first offense for detention is five days and thereafter 10 to 15 days of incarceration. While in detention, students receive educational instruction from the district.

Additionally, a truant child may be dealt with as a "child in need of services" according to chapter 984, Florida Statutes (2004), or the student's parent may be subject to criminal prosecution. Barbara Ja-



cobs, Assistant State Attorney, prosecutes parents who are not getting their children to attend school or who are not following court rules and orders. Parents prosecuted by the State Attorney's Office often go to jail.

After age 16, a student is not subject to compulsory attendance if the student completes a formal declaration of intent to terminate school enrollment. The declaration must acknowledge that leaving school will likely reduce the student's earning potential and must be signed by the student and the parent. The school will send a copy of the declaration back to the parents. **School Board Policy 4.03, Attendance**, provides that the school may withdraw a student who is over age 16 for non-attendance if, after having made diligent effort through the CST, it has been unable to contact the parent(s)/guardian(s) or the student.

The School Board of Pinellas County considers the education of our students a top priority and will vigorously continue to monitor students for truancy issues. The Court, State Attorney's Office and School Board personnel are involved in attending Truancy Summits throughout the year involving break-out groups to further investigate, recommend and improve student attendance. Students simply cannot learn if they are not present. ■

# Change in Interpretation — Parental Access to Student’s Address

By John W. Bowen, School Board Attorney

The question is often asked as to whether or not a noncustodial divorced parent has access to the student records concerning his or her child. Under the federal Family Educational Rights and Privacy Act (FERPA) and section 1012.22, Florida Statutes (2004) the answer is always "yes" unless there is some court order that has specifically cut off the rights of access of the parent. A general restraining order prohibiting a parent from having contact with the other parent or child is not sufficient to cut off the noncustodial parent's access rights to the student records.

This right of access to the student's records by the noncustodial parent has caused problems when the custodial parent is in fear that he or she or the child may be harmed. In the past, it has been our opinion that the right of access includes all aspects of the student's records. This includes the student's address and telephone number which gives the noncustodial parent the ability to find the custodial parent and child.

We have recently learned that the United States Department of Educa-

tion office having the responsibility for enforcing FERPA, the Family Policy Compliance Office, takes a position that is more protective of the custodial parent and child. That office received a complaint from a divorced father

complaining that a school district was not giving him access to all of his child's student records. Responding to the father's request for the student's records, the school district gave him everything but the address and telephone number. The father claimed that was a violation of FERPA.

The Family Policy Compliance Office said that while the student's address is technically part of the student's records, "it is not information created or developed by the institution that would affect the life of the student, as are academic, disciplinary, or health data." The Office ruled that there was no violation of

In the future, schools may withhold a student's address and telephone number when disclosing records to the noncustodial parent if the custodial parent has expressed a fear for his or her safety or the safety of the child ...



FERPA when the district withheld the address from the father because the

mother had expressed "that she was afraid for her safety and did not want her address revealed."

In the future, schools may withhold a student's address and telephone number when disclosing records to the noncustodial parent if the custodial parent has expressed a fear for his or her safety or the safety of the child if such information were to be disclosed to the noncustodial parent as part of the student records. There is no need for a restraining order or other court order restricting the noncustodial parent's rights to access in order to withhold the address and telephone number. ■

## Dear John ...

**Q.** Parents are quick to threaten to get their attorney involved in the dispute of the moment. What should we do when they actually bring an attorney to a meeting at the school?



**A.** According to the Rules Regulating The Florida Bar approved by the Florida Supreme Court, a lawyer representing a client is not allowed to communicate directly with a person that lawyer knows is represented by another lawyer. So, on the rare occasion when the parent actually brings an

attorney to a meeting with the teacher, assistant principal or principal, the first thing to do is let the parents and attorney know that you are represented by an attorney. This gives the parents and their attorney two options.

First, the parents can elect to pro-

ceed with the meeting without the presence of their attorney. Under no circumstances should you agree to proceed with the meeting with the attorney present. The attorney should know that it would be an ethical violation to communicate any further after being informed that you are represented by an attorney.

The second option is to reschedule the meeting at a time when one of the attorneys in the legal department can be present. You can apologize for any inconvenience that might entail, but point out to them that had they let you know in advance that the attorney was coming, you could have coordinated the time with the legal department. ■

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Diane Luisi, Legal Secretary

Melanie Davis, Clerk Spec II - Newsletter Publisher

***Legal Department ...  
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district.

We are pleased to introduce our new Staff Attorney, David Koperski. David was the top candidate out of 108 well-qualified applicants, and we are very fortunate to have him here. David received his undergraduate degree from Drake University in Des Moines, Iowa, where he graduated cum laude in May 1991 as a political science major. He attended law school at the University of Illinois, earning his juris doctorate degree in May 1994.

Do not let his youthful looks fool you. At 35 years old, David has almost 11 years of experience in private practice. Eight of those years were spent advising and representing public school districts in Illinois. Additionally, he has lectured extensively on public school law issues.

David and his wife, Lee Ann Brown (a Clearwater High School graduate), moved here from Chicago in the summer of 2002. Lee Ann is a doctor practicing in Clearwater. ■

***Personnel File and Public Record  
(Continued from page 1)***

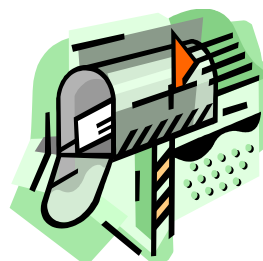
records (including psychiatric and psychological reports) and any evaluation done prior to 1983. Evaluations done in 1983 or thereafter are exempt from public review until the end of the school year following the one in which the evaluation was completed. In other words, the evaluation completed this year (2004-05) becomes a public record at the end of the 2005-06 school year.

In addition, no "derogatory materials relating to a person's conduct, service, character or personality" that are unrelated to work performance or other matters that may be cause for discipline may be placed in the file. For example, you should not find comments like "Charlie doesn't pay his debts" in your personnel file (especially if your name is not Charlie).

If materials relating to work performance or which may lead to discipline are placed in your personnel file, they must be reduced to writing within 45 days of the district administration becoming aware of the facts and signed by a person "competent to know the facts or make the judgment." Such materials to be included in the personnel file are required to be provided to you either by certified mail, return receipt requested or by personal delivery. These materials become a public record open for inspection 10 days after they are provided to you. You can respond in writing to any such materials and have the written response attached to the file copy.

If you believe that false information is included in your personnel file, you have the right to request the Superintendent or his designee to make "an informal inquiry" regarding material that you believe to be false. The Superintendent or designee must make a written report of his or her findings and attach it to the questioned material in your personnel file. This does not apply to evaluations or other matters of professional judgment.

If someone wants to review your personnel file, he or she must call the personnel department and schedule an appointment to do so. The personnel department will prepare your file for inspection by deleting any confidential information. A record of the person(s) reviewing your personnel file must be retained in the file. You have access to everything in your personnel file with the exception of documents in an ongoing investigation file. When an investigation is concluded, you have access to all documents in the investigation file. ■



Please send comments or suggestions for future articles to Melanie Davis at [davisme@pcsb.org](mailto:davisme@pcsb.org).