

Legally Speaking

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VOLUME V, ISSUE 4

School Year End 2005

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Student Records – Part I Right of Access to Student Records

By David Koperski, Staff Attorney

Student record issues remain prevalent and challenging in the public school setting. In this arena, we are governed by the federal Family Educational Rights and Privacy Act of 1974 (“FERPA”) and a Florida statute that covers many of the same issues. The U.S. Department of Education ensures compliance with FERPA through its power to withdraw federal funding from non-compliant school districts or states.

This article is the first in a three-part series discussing three basic rights of students and their parents under FERPA. In addition, the companion article on the following page in this issue provides a primer on the definition of student records, including the implications of “directory information.”

FERPA establishes and protects three basic rights of parents and eligible students: (1) the right to access, (2) the right to privacy (prevent disclosure) and (3) the right to challenge the accuracy of the records. These rights belong to the parent until the child either attains 18 years of age or is in attendance at an institution of postsecondary education. Thereafter, the rights belong to the student alone, to the exclusion of the parent, unless the student is a dependent for federal

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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.

Farewell Message

By John W. Bowen, School Board Attorney

It is with great sadness that I bid farewell to Pinellas County Schools and the many fine professionals with whom I have had the distinct honor and privilege of serving. As you may have read or heard, I am headed south over the big bridge to become School Board Attorney for Manatee County.

Perhaps the most difficult aspect of departing is leaving behind my friends and colleagues in the legal department. I truly have been blessed in having the opportunity to work with them. That is not to diminish the difficulty of leaving all the many other friends I have made over the past 10½ years. We have faced many challenges together, and I will miss all of you.

Goodbye, my friends. ■

What Constitutes a Student Record?

By John W. Bowen, School Board Attorney

David Koperski's article on the basic rights of parents and eligible students with respect to their student records brings up the question as to what constitutes a student record to which these rights apply. In both the federal FERPA and its Florida counterpart in section 1002.22, Florida Statutes (2004), the definition of student records is very broad.

The federal law and regulations include a short definition of "education records" to mean "those records that are ... directly related to a student; and ... maintained by an educational agency or institution or by party acting for the agency or institution." Florida's definition is more detailed. It defines "records" and "reports" to

Excluded from the definition of student records is "directory information." Directory information is information not normally considered to be an invasion of privacy if it is disclosed to the public.

... mean official records, files, and data directly related to students that are created, maintained, and used by public educational institutions, including all material that is incorporated into each student's cumulative record folder and intended for school use or to be available to parties outside the school or school system for legitimate educational or research purposes.

The definition goes on to give examples of what is considered part of a student's record, such as the student's Social Security number, academic work completed, scores on standardized intelligence and psychological tests and family background information. It is important to note that the definition of student records is not just limited to the cumulative folder.

Finally, the definition provides a catch-all phrase that states that student records include

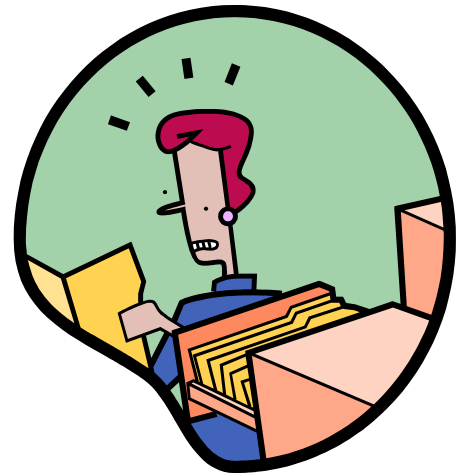
... any other evidence, knowledge, or information recorded in any medium, including, but not limited to, handwriting, typewriting, printing, magnetic tapes, film, microfilm, and microfiche, and maintained and

used by an educational agency or institution or by a person acting for such agency or institution.

Excluded from the definition of student records is "directory information." Directory information is information not normally considered to be an invasion of privacy if it is disclosed to the public. Florida's definition of directory information

... includes the student's name, address, telephone number if it is a listed number, date and place of birth, major field of study, participation in officially recognized activities and sports, weight and height of members of athletic teams, dates of attendance, degrees and awards received, and the most recent previous educational agency or institution attended by the student.

Such directory information may be released to the public without the parent's permission if the school district has given public notice of the categories of information that the district designates as directory information. The district must allow parents a reasonable time after the notice for the parent to notify the school district in writing that any or



all of the information designated as directory should not be released with respect to their child.

In Pinellas County, parents are informed about their rights with respect to directory information in the "Code of Student Conduct." The list of directory information includes "the image or likeness in pictures, videotape, film, or other medium" so as to allow publication of yearbooks and other publication of student pictures.

The list excludes addresses and telephone numbers as directory information that will be released. The purpose of that exclusion is to avoid having to give out lists of students' names and addresses to commercial enterprises to solicit business.

However, the No Child Left Behind Act requires that military recruiters and institutions of higher education be provided with names, addresses and telephone numbers of high school students unless the parents object in writing to such release. Parents are notified of that right in the "Code of Student Conduct" also. ■

Rites of Initiation, Part Two

By Tom Wittmer, Assistant School Board Attorney

Chad Meredith was 18 years old when he enrolled in the University of Miami and pledged a fraternity. On Nov. 4, 2001, along with the fraternity president and two upper-class fraternity brothers, Chad drank alcohol until his blood alcohol level was nearly two times the legal limit. Then, at the urging of the others, he jumped into a lake on campus. The group intended to swim across the lake, but Chad fell behind and drowned. Chad's family sued the two students who were involved and was awarded a \$12.6-million judgment.

Florida has a new law, enacted in response to this tragic death. To help stop what has been called a "growing epidemic" on school campuses, the Chad Meredith Act makes hazing in high schools and colleges a crime. The act defines hazing as "any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student" and includes such behavior as:

- ... pressuring or coercing the student into violating state or federal law;
- ... brutality of a physical nature, such as whipping, beating or branding;
- ... exposure to the elements;
- ... forced consumption of any food,

- liquor, drug or other substance;
- ... forced physical activity that could adversely affect the physical health or safety of a student;
- ... activity that would subject the student to extreme mental stress, such as sleep deprivation;
- ... forced exclusion from social contact;
- ... forced conduct that could result in extreme embarrassment; or
- ... other forced activity that could adversely affect the mental health or dignity of the student.

As we have explained in a previous "Legally Speaking" article [Vol. II, Issue 2], the "Code of Student Conduct" already prohibits hazing, as do [Board Policies 8.24, Guidelines to Prevent Sexual Harassment](#) and [8.241, Prohibition of Harassment](#). In an effort to bond and build camaraderie, groups sometime engage in or tolerate rituals or behaviors that could be deemed to be hazing. What the law prohibits is intentional or reckless conduct that creates a substantial risk of physical injury to the other person. Excluded from hazing are "customary athletic events or other similar contests or competitions or any activity or conduct that furthers a legal and legiti-

mate objective."

Hazing itself is a specific criminal offense under the new law. Now, if hazing results in serious bodily injury or death, the responsible persons may go to prison for up to five years. Even if no one is hurt, the guilty party could face up to a year in prison. Under the new law, it does not matter that the victim consented to the hazing, or that the hazing was not part of an official event, or that the hazing was not a condition of becoming a member in an organization.

The Chad Meredith Act was effective as of July 1, 2005, and applies to offenses that happen on or after that date. Any school employee who becomes aware of a planned or actual hazing activity immediately should contact the school principal or school resource officer. Hazing now is not just a violation of school board policy, it is a criminal act. ■



Sexual Offenders: Parents Want to Know

By Frances Sheffer, Stetson Law School Intern

Since the kidnapping and murder of 9-year old Jessica Lunsford, public attention has been focused on protecting children from sexual offenders and predators. Under Florida Statute, all "sexual predators" are "sexual offenders;" however, all "sexual offenders" are not "sexual predators." Sound confusing? Not really.

In a nut shell, a "sexual predator" is one who either has committed a violent sexual offense or one who

has committed numerous crimes involving sex. A "sex offender" is one who has committed any single crime involving sex.

Section 948.30(1)(b), Florida Statutes(2004) mandates that sex offenders who are on probation cannot live "within one thousand feet of a school, day care center, park, playground, or other place where children regularly congregate." The Department of Corrections can force offenders on probation to relocate if they live within the 1,000 feet limit.

However, the Department of Corrections can only strongly encourage the sexual offenders who are not on probation to relocate because there is no law that can force the offenders to move.

To help parents become more aware of the areas surrounding their child's route to the bus stop or school, schools should advise parents to regularly check the sexual offender list. Sexual offender lists, including names, pictures and addresses of the offenders, are posted by the Florida Department of Law Enforcement (FDLE) at <http://>

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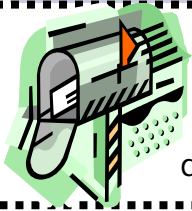
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Please send comments or suggestions for future articles to Melanie Davis at davisme@pcsb.org.

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www.fdle.state.fl.us. Parents can go to the website and click on "Sexual Predators/Offenders," located on the right side of the screen under "Search Our Files." Once the page is fully loaded, the parents click on "Search" located at the top or bottom of the page to get to the page where information can be entered. Parents then can enter a county, city or zip code to retrieve a list of offenders living in that area. The website also has a new link that allows site visitors to search by community. A specific address can be entered to request names, pictures and addresses of all sexual offenders who live in a radius of one to five miles.

Helping our parents become aware of where sexual offenders live can help protect our children from potential hazards. Pinellas County Schools cannot guarantee the accuracy of the website, it is maintained by the FDLE. ■

Student Records
(Continued from page 1)

income tax purposes.

For purposes of simplicity, this series of articles will refer only to parents exercising the rights. Who qualifies as a parent was the topic of a "Legally Speaking" article in Vol. II, Issue 4, which is accessible on the internet through the Legal Department link and on the intranet through the Attorney's Office link. While these three rights are the primary focus of most issues, FERPA also requires an annual disclosure of rights and provides the right to file a complaint with the Family Policy Compliance Office, the federal office charged with enforcing FERPA.

The right to access under FERPA is the general ability to review and inspect student records. If the parent does not understand a record, the school personnel must respond with an appropriate explanation or interpretation. This right does not allow the parent to unilaterally remove documents from the record; the third article in this series will discuss the right to challenge records, including the expungement process (how to remove a record).

If a student record contains information (beyond merely directory information) on more than one student, the parent of any one student may have access only to the specific information that pertains to that parent's child. There is no right of access to other students' records even though they may contain information relating to your child. If a parent requests access to records that also contain information on other students, a copy of the record redacting (deleting) information about other students should be prepared for review by the parent. The original record should remain unaltered and in the file for future reference by school personnel.

The right to access includes the right to obtain copies of the records. A reasonable fee may be assessed for copies unless the fee effectively prevents the parent from exercising the right to review and inspect. On the other hand, a fee may not be charged for efforts taken to search and retrieve records. In accordance with federal and state law, the district charges 15 cents per page for sizes up to 8.5 inches by 14 inches, an additional five cents for double-sided and not more than one dollar for a certified copy of any single record.

The right to access is a broad right liberally construed in favor of the parent but has several restrictions. Decisions to deny access should be considered thoughtfully and well grounded in strong legal reasoning.

The next article in this series will discuss the right to privacy of student records and highlight some interesting tensions that arise between one parent's right to access and another's right to prevent the disclosure of the same record. ■

