Pinellas County School Board Attorney's Office

Legally Speaking

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VOLUME VI, ISSUE 1

FALL 2005

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Student Records – Part II
Right to Privacy of Student Records

By David Koperski, Staff Attorney

This article is the second in a three-part series discussing the basic rights of parents and students in the area of student records. The last issue of *Legally Speaking* provided a brief introduction on student records, including to whom the rights belong, and discussed the right of access to student records. The next issue will explore the right to challenge the accuracy of records. However, most questions we receive relate to the third major right – the right of privacy of student records, also known as the right to prevent disclosure.

The Family Educational Rights and Privacy Act (FERPA) and our corresponding state law, section 1002.22, Florida Statutes (2004), guarantee the privacy of student records with some exceptions. The definition of "student record" was addressed in the last issue of this publication (Vol. V, Issue 4, page 2). Directory information is excluded from the definition, unless the parent opts otherwise. Our Code of Student Conduct and Board Policy 4.31, *Annual Notification of Rights Concerning Educational Records,* defines directory information in our district.

In general, student records cannot be released to third parties without the consent of the parent. However, many statutory exceptions exist that allow disclosure without parental consent. There are five recurring exceptions with which all staff should be familiar. First, records can be shared without parental consent with other PCS employees who have legitimate educational interests in the information. While this seems obvious, take care not to share student information unless it is for a bona fide educational reason. The *Student Education Records Manual* at II.Q, p. 10, defines

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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.

Have you ever ...

By Jim Lott, Administrator, Office of Professional Standards

... gone home after a long day at school and complained to a spouse or friend about a difficult student or parent? During the course of the conversation did you inadvertently mention a student or parent by name and provide the listener with details that may be considered personal or confidential? All of us talk about our jobs to others outside the school system from time to time. However, it is important to know that it is never appropriate to discuss individual students or their families with people who

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Family Matters—Communicating with Parents

By Tom Wittmer, Assistant School Board Attorney

We receive many calls in our office throughout the year about court orders involving school choice, visitations and related issues. Below are some of those frequently asked questions:

When parents are separated or divorced, which parent chooses the school?

In general, "[a] student's address is considered the address of the custodial parent(s), or the legal guardian(s), if parent(s) or guardian(s) live within the Pinellas County school district." See Board Policy 6.15, *Pupil Assignment to Schools (Attendance Districts).* The address of the custodial parent is where the student stays more than 50% of the time.

Sometimes a court order will designate which parent has "primary physical residence" of the minor child(ren), and that kind of designation is helpful to the school. In those cases, the parent who enrolls the child is normally the primary residential parent.

However, sometimes the other, non-residential parent seeks to initially enroll the child. We cannot refuse this initial enrollment, because the child lives in Pinellas County; it is the responsibility of the designated primary residential parent to enforce the court order.

In other cases, however, the court either makes no designation of primary residence or grants a joint or shared residential arrangement, where the student stays equally with both parents, on separate days or weeks. When that happens, we must honor either parent's initial or subsequent enrollment of the child, because on any given day of enrollment, the child could in fact be living with either parent. Policy 6.15(1)(c) requires the parents to provide a joint written and notarized statement " … identifying the parent of record for school assignment purposes." If this is not done, the situation can become chaotic, and one parent usually obtains an emergency court order to clarify who has primary residential custody of the child. We suggest this course of action, and that the parent send a certified copy of the new order to the school.

Unless a court order provides otherwise (see below), non-residential parents must generally be treated as any parents would be. They may see the child, enter upon school grounds, talk to the teacher, review records, etc.

What rights do non-residential parents have?

A parent must verify with the school that he or she is a parent. This can be done with a copy of the child's birth certificate or a document from a court, or the identity can be verified through the other known parent. Florida law supports the ability of both parents, *whether married or not*, to be involved in decision-making about their child. Unless a court order provides otherwise (see below), non-residential parents must generally be treated as any parents would be. They may see the child, enter upon school grounds, talk to the teacher, review records, etc.

One exception is Policy 4.28, *Releasing a Student from School,* which provides that "the non-residential parent shall not remove the child from school without the knowledge and consent of the residential parent unless the school is furnished with a certified copy of the order that specifically permits the non-residential parent to remove the child from school."

Another exception exists when we have a good faith belief that the release of certain records (e.g., the address of parent B) to parent A could cause physical harm to parent B and/or the student (see article on page 3 of the Vol. V, Issue 3 of *Legally Speaking*.

What if a court order limits a parent's rights (*e.g.,* supervised visitation only, etc.)?

Both parents retain parental rights unless a court order takes them away. In addition to rights relating to school choice (discussed above), orders could limit other rights such as access to records, receipt of report cards, visits, presence on school grounds, etc. The school must strictly adhere to the provisions as written.

If the court order limits visitations to "supervised visitations," we do not allow such visitations on school grounds because the school cannot be responsible for the supervision component. If the order limits access to records, the school should make a note in the student file of this restriction. Similarly, school personnel must follow other restrictions in an order and take whatever measures are necessary to inform school personnel who need to know of the restrictions.

What if a non-custodial parent telephones and asks to talk to the student?

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The Jessica Lunsford Act – *New Screening of Vendors*

By David Koperski, Staff Attorney

In response to the tragic abduction and murder of Jessica Lunsford, the Florida legislature passed, and the governor signed, the Jessica Lunsford Act (JLA). While the majority of the Act increased measures used to monitor sexual predators and offenders, part of it required additional security at public schools.

As the law relates to public schools, contractual personnel who (1) are permitted access to school grounds when students are present, (2) have direct contact with students, or (3) have access to or control of school funds must meet level 2 fingerprint screening requirements. "Contractual personnel" includes any vendor, individual, or entity under contract with the school board, including the employees, subcontractors, and other agents of the vendors. Level 2 screening under the JLA requires that we review the state and FBI criminal history report, if any, of the vendors and disqualify those convicted of "crimes of moral turpitude," such as lewd and lascivious behavior toward a minor.

The JLA requires the fingerprinting and screening of broad groups of organizations, from groups that have written agreements to provide educational services to non-educational organizations that rent our facilities during hours when students are elsewhere on the campus. Furthermore, contact with students is not limited to on-campus contact – if we have an agreement for students to receive services off campus, the provider's employees who have direct contact with students must go through the process. So long as the criteria above are met, screening is required.

The Pinellas County Schools Police Department, with assistance from the Personnel Department, have been fingerprinting and screening hundreds of vendors. We will be issuing individual badges indicating that level 2 screening requirements have been met. Eventually, we will require all contractual personnel to have a badge before entry onto campus when students are present. However, until that definite date is determined, we will be operating the schools as usual.

Vendors who have met level 2 screening by another public agency, such as the Pasco County Schools or the Florida Department of Children and Families (DCF), may apply to have that screening recognized by us through our on-line form created for that purpose.

Our website's homepage has links to a comprehensive Q&A section, a fingerprinting appointment scheduling link, and the form for other agencies to complete for our recognition of their level 2 screening. Vendors with questions should be referred to our website.

Lastly, regardless of the JLA, each building should already have a safety plan in place and should be aware of who is visiting the campus and why. ■

Have you ever ..

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do not work for the school system unless required by law, or the legal guardian has signed a release of information.

Like doctors and lawyers, educators in the State of Florida are bound by their own code of ethics: The Code of Ethics and The Principles of Professional Conduct of the Education Profession in Florida. The Code of Ethics, section (3) (i), "Obligation to the student," requires that educators, "shall keep in confidence personally identifiable information obtained in the course of professional service, unless disclosure serves professional purposes or is required by law." In other words, it is acceptable to share personal information about students and their families with other educators within the system who have a need to know and are working directly or indirectly with the student or family.

You may also release requested information if you receive a subpoena so long as certain district procedures are followed. In some cases a parent may sign a "Release of Information" giving you permission to release personal information to a specific doctor, attorney, or social agency. For a more detailed discussion of the privacy of student records, see the front page article in this issue.

As educators, we have access to a tremendous amount of personal information about our students and their families. We should never violate a family's right to privacy by discussing confidential information with family or friends. Doing so is unlawful, unprofessional, and unethical. ■

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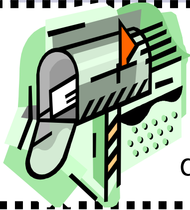

Please send comments or suggestions for future articles to Melanie Davis at davisme@pcsb.org.

Family Matters …

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The voice on the telephone could be anybody. Without knowledge of the caller's identity and proof that he or she is a parent, we cannot permit a child to speak to the caller.

One solution is to require the caller to send an affidavit, photo ID and telephone number indicating where he or she can be reached. (see article on page 3 of the Vol. I, Issue 3 of *Legally Speaking*.

What if a parent is in jail and asks for copies of report cards or other records?

A parent who is in jail still has a right of access to school records. Mail is an alternative way to provide the records to the parent. The school can ask the parent for a self-addressed stamped envelope and then send copies of the records. ■

Student Records

(Continued from page 1)

"legitimate educational interest" as "an assigned responsibility or job description for working with students or student records ..." Second, student records can be shared with schools, including post-secondary schools, in which the student seeks or intends to enroll.

Third, we can share records with law enforcement agencies with which we have an interagency agreement that seeks to improve school safety and reduce juvenile crime, truancy, suspensions, and expulsions. The Legal Department has a list of law enforcement agencies with which we have agreements. Fourth, we can share records with the Department of Children and Families (DCF) or a community-based care lead agency acting on its behalf.

Last, but not least, we can disclose student records without parental consent to appropriate parties in connection with an emergency, if the information is needed to protect the health or safety of the student or others.

The district must release student records in response to a subpoena or if a court order has been issued for them. We must follow certain procedures if we receive subpoenas for student records. In these cases, we immediately advise the parent(s) in writing of the subpoena and indicate we will release the requested records in 10 days if we do not receive a court order indicating otherwise. This gives the parent an opportunity to file a Motion to Quash the subpoena if they object to the release. If the subpoena demands the records in less than 10 days, we obtain additional time from the subpoenaing party. Procedures are outlined in Student Education Records Manual at VIII, p.18.

Another area ripe with questions is one where the parents are separated or divorced and one parent seeks to prevent the disclosure of student records to the other. Unless one of two circumstances exist, we cannot deny a parent access to their child's student records. First, a court order may expressly limit one parent's access to the child or the child's records. These orders must be reviewed carefully – just because a parent asked a court for certain language to be included in an order does not mean that language was placed in the order and, absent clear prohibitory language, we cannot impinge on the other parent's rights. Second, we can deny parent A access to the student's and/or parent B's address and phone information if parent B has expressed a credible concern for his/her safety or the safety of the child living with him/her. This ability to deny access does not apply to the remainder of the student records, such as academic and health reports.

If a wrongful disclosure is made, the aggrieved party has a right, under Florida law, to sue to stop the disclosure and recover their attorney's fees and costs. Further, the federal agency enforcing FERPA will direct the district to come into compliance or risk losing federal funding. ■