

# Legally Speaking

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## Inside this issue:

<i>Powers and Duties of School Principals</i>	2
<i>Releasing Bus or Hall Videotapes to Parents</i>	2
<i>Teacher Authority and Responsibility for Control of Students</i>	3
<i>Students Dropped Off Early or Picked Up Late - Limited Duty of Supervision</i>	3



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## *Student Records – Part III Right to Challenge and Hearing*

By David Koperski, Staff Attorney

**T**his article is the third in a three-part series discussing the basic rights of parents and students in the area of student records. While the two previous issues explored the rights of access and privacy, this issue will explain the right to challenge the accuracy of student records and seek a hearing. All student record rights are protected by the federal Family Educational Rights and Privacy Act (FERPA) and the corresponding state law, section 1002.22, Florida Statutes (2004). The 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 income tax purposes. The definition of "student record" was addressed in Vol. V, Issue 4, page 2 of this publication, which is available on-line with all other previous issues.

In order to ensure that the student record is not inaccurate, misleading or otherwise in violation of the privacy or other rights of the student, the parent has the right to challenge the contents of the student records. In addition, the parent must be given an opportunity to correct, delete or expunge inaccurate materials by following the procedures described in this article.

Any challenge to the accuracy of a student record first should be addressed in an informal meeting between the parent and the school administration. The law encourages a resolution at this stage, if possible. If all parties agree to a correction, deletion, addition or other revision to the student record, then the specific agreement

*(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.*

## **Greetings from the New School Board Attorney**

I'm Jim Robinson. I come to you from Alachua County School District where I served as Staff Attorney.

My first experience with school law was as General Counsel of the Florida Department of Education and I decided then to make school law the sole focus of my law practice.

*(Continued on page 4)*

## Powers and Duties of School Principals

By Jim Robinson, School Board Attorney

**T**he K-20 Education Code vests certain powers and imposes certain duties on school principals, separate and apart from those pertaining to school boards and superintendents. We know that principals face difficult and sometimes unpredictable situations involving faculty, staff members, students, parents and the public, which demand good judgment, a high degree of skill and considerable experience. The statute could not possibly address every such situation; however, the statute does specify certain powers and duties of the school principal, and these consist in part of the following:

... Exercise authority over school district personnel under his or her supervision.

- ... Recommend to the Superintendent the employment of instructional personnel.
- ... Assume responsibility for the performance of all assigned personnel.
- ... Faithfully and effectively apply the approved personnel assessment system.
- ... Assist teachers to use student assessment data, as measured by student learning gains, for self-evaluation.
- ... Perform such duties as may be assigned by the Superintendent pursuant to policies of the School Board.
- ... Provide leadership in the development and implementation of a school improvement plan.
- ... Make the necessary provisions to ensure that all school reports are

accurate and timely.

- ... Provide the necessary training opportunities for the staff to accurately report attendance, FTE program participation, student performance, teacher appraisal and school safety and discipline data.
- ... Exercise responsibility for the management and care of instructional materials.
- ... Maintain a permanent cumulative record for each student enrolled in a public K-12 school.
- ... Consult with the superintendent in advance of the transfer of a teacher to the principal's school and if, in the judgment of the principal, students would not benefit from the placement, recommend an alternative placement. ■

## Releasing Bus or Hall Videotapes to Parents

By David Koperski, Staff Attorney

**I**f your school is like most in the district, you have received requests from parents who want to view videotapes capturing their children as aggressors or victims in a fight or other disturbance. These requests involve student records issues and must be analyzed carefully to avoid violating other students' privacy rights. As an initial matter, Florida courts have ruled that videotaped images of students created and used by schools are student records protected by the student records laws discussed above. However, this issue is complicated by the fact that the videotapes often show more than one student. For example, a bus videotape may show students Adam and Becca involved in a confrontation. On the one hand, Parent A is entitled to view his child's (Adam's) student records. On the other hand, Parent B is entitled to prevent Parent A (or anyone else for

that matter) from seeing the record because it also shows her child, Becca.

A Florida statute attempts to resolve this dilemma by providing:

"When the record or report includes information on more than one student, the parent or student shall be entitled to receive, or be informed of, only that part of the record or report that pertains to the student who is the subject of the request. Upon a reasonable request therefore, the institution shall furnish such parent or student with an explanation or interpretation of any such record or report." F.S. 1002.22(3)(a)(2).

This statute provides the district with two options in these situations. First, we can edit the videotape to blur the faces of the other students and then release or show a copy to the requesting parent so he can see



how his child acted. Second, we can "inform" the requesting parent of the information on the videotape by providing an oral or written statement to the parent of how his child acted; the videotape would not be shown in this case. Most parents will not be satisfied with the second option. Because the district has the technology to edit the videotape, you may wish to consider the first option, especially in cases involving severe discipline such as out-of-school suspensions and expulsions. ■

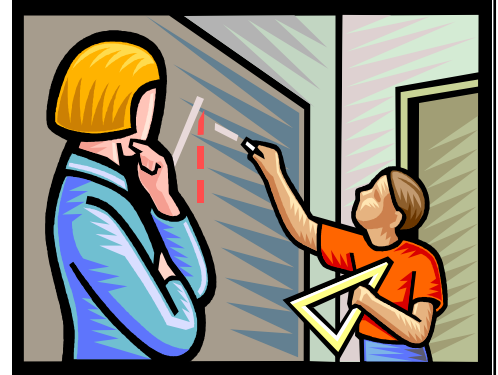
# Teacher Authority and Responsibility for Control of Students

By Jim Robinson, School Board Attorney

**F**lorida statute grants each teacher or other member of the staff of any school the authority to control and discipline students assigned to him or her by the principal, or the principal's representative, and imposes on him or her the responsibility to keep good order in the classroom and in other places in which he or she is assigned to be in charge of students.

Subject to School Board policy and the "Code of Student Conduct," teachers and other instructional personnel have the authority to undertake any of the following actions in managing student behavior and ensuring the safety of all students in their classes and school and their opportunity to learn in an orderly and disciplined classroom:

- (a) Establish classroom rules of conduct.
- (b) Establish and implement consequences designed to change behavior or infractions of classroom rules.
- (c) Have disobedient, disrespectful, violent, abusive, uncontrollable, or disruptive students removed from the classroom for behavior management intervention.
- (d) Have violent, abusive, uncontrollable or disruptive students directed for information or assistance from appropriate school or district school board personnel.
- (e) Assist in enforcing school rules on school property, during school-sponsored transportation and during school-sponsored activities.
- (f) Request and receive information as to the disposition of any referrals to the administration for violation of classroom or school rules.
- (g) Request and receive immediate assistance in classroom management if a student becomes uncontrollable or in case of an emergency.
- (h) Request and receive training and other assistance to improve skills in classroom management, violence prevention, conflict resolution and related areas.
- (i) Press charges if there is a reason to believe that a crime has been committed on school property, during school-sponsored transportation or during school-sponsored activities.
- (j) Use reasonable force, according to standards adopted by the State Board of Education,



to protect himself or herself or others from injury.

Teachers and other instructional personnel are required to:

- (a) Set and enforce reasonable classroom rules that treat all students equitably.
- (b) Seek professional development to improve classroom management skills when data show that they are not effective in handling minor classroom disruptions.
- (c) Maintain an orderly and disciplined classroom with a positive and effective learning environment that maximizes learning and minimizes disruption.
- (d) Work with parents and other school personnel to solve discipline problems in their classrooms. ■

## Students Dropped Off Early or Picked Up Late — Limited Duty of Supervision

By Jim Robinson, School Board Attorney

**P**ursuant to Sec. 1003.31, F.S., students are subject to the control of the school during a reasonable time before and after the student is on the premises for attendance at school or for authorized participation in a school-sponsored activity, and only when on the premises. **School Board Policy 6.20, Supervision of**

**Students**, says that supervision is provided 30 minutes before school begins and 30 minutes after school ends.

Casual or incidental contact between school district personnel and students on school property does not result in a legal duty to supervise outside of the 30 minutes. However,

parents must be advised in writing twice per year, or by posted signs, of the school's formal supervisory responsibility and that parents should not rely on additional supervision.

Because the "Code of Student Conduct" is published only once annually, we recommend that a notice be posted on school premises. ■

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***New School Board Attorney***  
*(Continued from page 1)*

I am honored to be here in Pinellas County. My goal for the Legal Department is to achieve excellence through quality service to the School Board, the Superintendent, and staff members. I welcome feedback and urge you to let us, in the Legal Department, know how we can provide you with the quality service you need and deserve. I look forward to working with you. ■

*Success*

To laugh often and much;  
to win the respect of intelligent people  
and affection of children;  
to earn the appreciation of honest critics  
and endure the betrayal of false friends;  
to appreciate beauty, to find the best in others;  
to leave the world a bit better,  
whether by a healthy child,  
a garden patch  
or a redeemed social condition;  
to know even one life has breathed easier  
because you have lived.  
This is to have succeeded.

*-Ralph Waldo Emerson-*

***Student Records***  
*(Continued from page 1)*

should be reduced to writing, signed by all parties and a copy retained by the school in a general file, but not in the student record. The school then should take the action contemplated by the agreement, such as deletion, correction, etc.

If the parties cannot reach an agreement in this informal setting, the parent may file a formal grievance with the appropriate area office. The area superintendent will act as the



hearing officer and immediately should schedule a hearing time that is convenient for all parties. At the hearing, the parent must be afforded a full and fair opportunity to present written and oral evidence bearing on his or her challenge of the student records. The school-based personnel may present evidence in rebuttal of the parent's request. After the hearing, the area superintendent must prepare and mail a written decision to all parties within a reasonable time. If the decision grants relief to the parent, the school immediately should take the actions necessary to implement the decision.

Various forms of relief may be granted in favor of the parent. For example, school documents may be deleted from or added to the student record a statement from the parent may be added to supplement the record, or a correction to an existing document may be made. If the process described above is taken, the school will be justified in making these revisions to the record. However, no district personnel should amend a student record without complying with these procedures. Doing so would violate the rights of the parent and student and subject the district and possibly the employee to liability and possible financial sanctions.

Another area of student record concerns we have seen with increased frequency is the improper release of student records to law enforcement agencies. While we have on-going and strong partnerships with local law enforcement agencies throughout the county, we are charged with maintaining the confidentiality of our students' records except in certain circumstances. Under the law, we cannot simply give out student records to third parties, including law enforcement agencies, without a specific statutory authorization. We are allowed to release student records if we obtain written and signed parental consent. In addition, if we receive a subpoena or court order seeking student records, we may release them after we notify the parent of our receipt of the subpoena or order. We may also release student records in an emergency. If a third party asks for copies of student records, we recommend you contact the legal department to determine whether the circumstances warrant the release without parental consent. ■