

# 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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## Retention of E-mails as Public Records

By Jim Robinson, School Board Attorney and Robin Tew, Supervisor, Records Management

**E**-mail messages are public records, subject to the same retention and disposition requirements as any other public records. It is important for all employees to know that responsibility for retaining e-mails rests with the person creating or receiving them. The District's Management Information Systems (MIS) Department does not maintain e-mails beyond a certain point, and e-mails that are deleted before the daily backup do not even make it into the hands of MIS. Thus, we cannot rely on that office to keep copies of e-mails we send or receive.

The Florida Department of State, State Library and Archives, regulates record retention and disposal through the publication of General Records Schedules. The schedules list different records series and their minimum required retention. The length of time records must be retained depends on which series the records fall under. E-mail is not a record series but rather a records media. How long you must keep an e-mail message is determined by the information it contains.

For example, if an e-mail relates to a school board contract, the e-mail must be

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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.*

## Student-Related Public Record Exemptions

By Jim Robinson, School Board Attorney

**T**here are a number of documents and records related to students, personnel, purchasing, computers and legal/audits that are exempt from disclosure under Florida's Public Records Act. The student-related exemptions are listed below. Other categories of exempt records will be summarized in subsequent issues of *Legally Speaking*. District employees only may include information related to these exemptions in their communications with other district personnel or authorized persons for a legitimate educational purpose.

... All birth records of Florida except those more than 100 years old. F.S.

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## Truancy Magistrate Program Introduced In Five Middle Schools

By David Koperski, Assistant School Board Attorney  
and Betty Turner, Paralegal



With demonstrated effectiveness, the Truancy Magistrate Program may be expanded to other Pinellas County middle schools in future years.

The Sixth Judicial Circuit Court is partnering with Pinellas County Schools, the Juvenile Welfare Board and Family Resources, a not-for-profit child welfare organization, to launch the Truancy Magistrate Program in five pilot middle schools beginning this semester. The program will offer another level of interdiction against truancy. With funding provided by the Juvenile Welfare Board, the court has hired a truancy magistrate judge, who currently is holding weekly truancy hearings before

school hours at Joseph Carwise, Madeira Beach, Oak Grove, Palm Harbor and Tarpon Springs middle schools. The magistrate judge will address the reasons for the students' truancy and hold truant students and their parents accountable for failing attendance.

Upon the filing of a truancy petition by Superintendent Wilcox, through the staff attorney's office, students at these five schools will be summoned, along with their parents, to appear before the truancy magistrate judge at their school to address the truancy issues. The magistrate will impose sanctions that must be met by participating families, including weekly hearing attendance, consistent school attendance and referral to community services as deemed appropriate. Failure to complete these requirements or participate

voluntarily in the program will result in a formal court appearance for arraignment on the truancy charge. Successful completion of the in-school magistrate program can result in a complete dismissal of the truancy petition.

During program participation, case managers from Family Resources will be in frequent contact with the families, even during summer months, to ensure that appropriate referrals for services are made and kept and that all imposed sanctions are adhered to.

With demonstrated effectiveness, the Truancy Magistrate Program may be expanded to other Pinellas County middle schools in future years. The program is modeled after a successful truancy magistrate program in Rhode Island, and all parties diligently will work for the success of the program here. ■

## Release of Student Records to Department of Children and Families (DCF) Agents

By David Koperski, Assistant School Board Attorney

We often receive questions regarding the release of student records to the Department of Children and Families (DCF) or DCF-authorized agents. In short, we can, without prior parental notice or consent, release student records to DCF or a community-based care lead agency acting on behalf of DCF. A list of the community-based care lead agencies throughout our area and the state can be found at: [www.dcf.state.fl.us/cbc/docs/leadagencycontacts.pdf](http://www.dcf.state.fl.us/cbc/docs/leadagencycontacts.pdf).

As noted in the series of articles on student records in the last three issues of *Legally Speaking*, we can-



Thus, we can, without prior parental notice or consent, release student records to these agencies and their authorized agents.

not release student records without prior parental consent (or student consent if over 18 years of age or attending a postsecondary school) unless we have specific statutory authority to do so, such as in the case of an emergency when release of the records (or personally identifiable

information contained therein) is necessary to protect the health or safety of any person, or pursuant to a subpoena if we notify the parent of our receipt of the subpoena. One of the other statutory exceptions specifically mentions DCF and its related community-based care lead agencies.

Thus, we can, without prior parental notice or consent, release student records to these agencies and their authorized agents. Note, however, that this exception does not cover all

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## Florida Voucher Program Ruled Unconstitutional

By David Koperski, Assistant School Board Attorney

On Jan. 5, 2006, the Florida Supreme Court issued its opinion in *Bush v. Holmes*, the case challenging the validity of the Florida Opportunity Scholarship program. This program generally allowed students at failing public schools to use public funds to pay for a private education. The court, by a 5-2 vote, ruled that this program violated the Florida Constitution's Article IX guarantee of a "uniform, efficient, safe, secure, and high quality system of free public schools." The court, however, specifically allowed current vouchers to continue until the end of this school year to minimize the disruption of students' current education.

The court stated that the program "diverts public dollars into separate private systems parallel to and in competition with the free public schools that are the sole means set out in the Constitution for the state to provide for the education of Florida's children," and that "[t]his diversion not only reduces money avail-



able to the free schools, but also funds private schools that are not 'uniform' when compared with each other or the public system." In particular, the court noted that while public schools must have certified teachers who undergo criminal background checks, follow the "Sunshine State Standards" and teach many state-mandated subjects, the private schools in the voucher program are not bound by such requirements to ensure quality and uniformity.

While many voucher programs across the nation are challenged on establishment of religion grounds

(i.e., that the use of public funds in religious schools—most private schools are religious schools—amounts to the state-supported religion), the Florida Supreme Court case was based upon the Article IX provision mentioned previously. The court did not have to reach the religion question because the voucher program was prohibited under the Article IX provision that requires a free, high-quality and uniform system of public schools. However, the court left standing but did not comment on a lower court ruling that found the vouchers unconstitutional on religion grounds.

This court decision did not invalidate other Florida voucher programs such as the McKay Scholarship program or the corporate tax credit voucher program. However, this ruling could provide grounds for the invalidation of these other voucher programs using the same Article IX argument. ■

## The McKinney-Vento Homeless Assistance Act ...



... mandates that districts provide students without a permanent residence the chance to receive a free appropriate public education.

Districts are required to designate a liaison to identify and work with homeless youths and appropriate agencies. Our liaison is Donna Sicilian.

### Requirements of McKinney-Vento

#### - Academic Achievement.

Homeless students, by law, need access to the education and related services they need so they can meet the same challenging state achievement standards as their peers.

- **School Selection.** Districts must keep homeless students in their school of origin to the extent feasible while the students are homeless unless the parent objects. A student's school of origin is the school he attended when he was permanently housed or the school in which he was last enrolled.
- **Liaisons.** Every district must designate an appropriate staff member as a liaison for homeless students.

- **Transportation.** At a parent's or guardian's request, homeless students must be transported to and from the school of origin. If the student does not have a guardian, transportation is required at the liaison's request. If the student is living outside the school-of-origin's district, the district near the temporary residence and school-of-origin's district must divide the transportation responsibility.
- **Education services.** Students must receive those appropriate educational services they are eligible for, including local, state and federal preschool programs, health, dental and psychological services. ■

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**E-mails**

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kept for the period of time applicable to contracts, which is five fiscal years after completion or termination of the contract. To determine the dates of records eligible for destruction, check the current Disposal Authorization. It is published on the district website at [www.pinellas.k12.fl.us/recman/home1.html](http://www.pinellas.k12.fl.us/recman/home1.html).

MIS recommends that e-mails you are keeping be copied to a hard drive, CD or diskette. For assistance in determining which e-mail can be deleted, consult with the district's records custodian, Robin Tew, at (813) 854-6077, ext.1000. ■

**Release of Student Records to DCF**

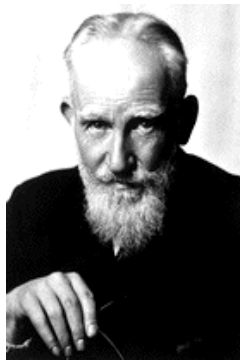
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child welfare organizations, and if a school receives a request for records from an agency not listed as a community-based care lead agency, it cannot release the records unless another exception applies, such as the emergency exception. If you are in doubt as to whether you should release the information, please contact us, and we will be happy to work through the issues with you. ■

**Student Related Public Records**

*(Continued from page 1)*

- 382.025(1)
- ... Personally identifiable records or reports of the student and any personal information contained therein. F.S. 1002.22(3)(d)
  - ... Cumulative records of public school pupils. F.S. 1003.25(1)
  - ... Information identifying a Florida Kidcare program applicant or enrollee. F.S. 409.821
  - ... Identifying information, including medical records and family financial information, obtained by the Florida Healthy Kids Corporation. F.S. 624.91(8)
  - ... Hearings on exceptional student placement or denial of placement in special education programs. F.S. 1003.57(5)
  - ... Upon request of the parent, hearings challenging the content of student records and reports. F.S. 1002.22(3)(c)
  - ... Student suspension and expulsion hearings. F.S. 1006.07(1)(a)
  - ... Tests and related documents developed to measure and diagnose student achievement of college-level communication and mathematics skills. F.S. 1008.345(8)(h)
  - ... Examination and assessment instruments, including developmental materials and work papers. F.S. 1008.23
  - ... Information that could identify an individual or the individual's employer which is contained in The Florida Education and Training Placement Information Program. F.S. 1008.39(3)
  - ... Provisions in the school health services plan developed for maintenance of health records of individual students. F.S. 381.0056(5)(p). ■



"My life belongs to the whole community, and as long as I live, it is my privilege to do for it whatsoever I can. I want to be thoroughly used up when I die, for the harder I work, the more I live. I rejoice in life for its own sake. Life is no "brief candle" to me. It is a sort of splendid torch which I have got hold of for the moment, and I want to make it burn as brightly as possible before handing it on to future generations."

*George Bernard Shaw,  
from a 1904 speech in  
Brighton, England*