

Legally Speaking

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Inside this issue:

<i>Emergency Shelter Duty</i>	2
<i>Are You Providing Free Appropriate Public Education?</i>	2
<i>Removal of Disruptive Students from Class</i>	3
<i>Moment of Silence</i>	3



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Non-renewal, Suspension and Dismissal of Annual Contract Instructional Personnel

By Laurie Dart, Staff Attorney

The 97-day probationary period is applicable to all instructional personnel (plus principals and supervisors) hired after June 30, 1997. During this period, the employee may resign, and the district may dismiss, without cause. Thereafter, during the term of the contract, suspension or termination of instructional personnel requires "just cause." Just cause includes, but is not limited to, misconduct in office, incompetence, gross insubordination, willful neglect of duty, or conviction of a crime involving moral turpitude. State Board of Education Rule 6B-4.009 defines the basis for charges upon which dismissal action against instructional personnel may be pursued, and the definitions are summarized as follows:

... Misconduct in office means a violation of the Code of Ethics of the Education Profession and the Principals of Professional Conduct for the Education Profession, which is so serious as to impair the individual's effectiveness in the school system.

... Incompetence means the inability or lack of fitness to discharge the required duty

(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.

Welcome to Our New Staff Attorney

By Jim Robinson, School Board Attorney

We are happy to welcome Laurie Dart as the district's staff attorney. Laurie earned her bachelor's degree from Suffolk University, Boston, and her juris doctorate degree from Suffolk University Law School, Boston. Laurie brings 19 years of legal experience earned in private practice where she was a partner at a prestigious law firm, handling transactional and litigated matters.

The staff attorney reports to the superintendent and represents him in employee discipline cases and student expulsions and confers with the school board attorney on general legal issues. In addition to handling these matters, she will field most student-related inquiries from school-based personnel. ■

Emergency Shelter Duty

By David Koperski, Assistant School Board Attorney



Under Florida law, all public school districts in areas affected by a storm “shall participate in emergency management by providing facilities and necessary personnel to staff such facilities.”

All PCS employees recently received an e-mail from Superintendent Wilcox regarding emergency shelter duty during the upcoming hurricane season. Under Florida law, all public school districts in areas affected by a storm “shall participate in emergency management by providing facilities and necessary personnel to staff such facilities.” See F.S. 252.38 (1)(d). That means we must provide buildings to be used as public storm shelters and personnel to staff the shelter, including management, plant operation, nursing staff, transportation when necessary, and food services. The school board has adopted a policy recognizing this duty and providing that all employees called into work at a shelter are

required to comply and will be compensated. See [Board Policy 2.23\(5\) District Safety and Security](#).

Many employees question what this means to them. With more than 14,000 full-time employees working in the district, the vast majority of us will not be called into shelter duty. In fact, subject to the severity of weather conditions, the district intends on calling only upon its rotating teams of shelter staffers. These teams currently are being assigned, and those on the list will know in advance of their status. To view the list, go to www.pinellas.k12.fl.us/forStaff/ and click on “Hurricane Shelter Assignments.” The 2006 list will be posted soon. While most of us will not be called, the e-mail was sent to all employees in the unlikely event that a major hurricane hits our area and we must keep the shelters open for a longer period than planned, necessitating additional

personnel to relieve our assigned teams.

As was true last year, the district has a process for applying for an exemption to be excused from shelter duty. Dr. Wilcox’s e-mail contained a copy of the district’s Emergency Shelter Duty Exemption Guidelines that describes the grounds and procedure for obtaining an exemption. You should review that process and make any exemption requests as soon as possible. Requests must (1) be in writing, (2) specify the grounds for the exemption, (3) provide competent documentation of such grounds, (4) designate the exact timeframe of exemption sought (ex., “July 22 through July 30”) and (5) be directed to “Office of the Staff Attorney” at the Administration Building. In order to ensure that the district can fully staff the shelters and count on those called, employees can be disciplined if they are called and fail to report during a time when they have not received an exemption. ■

Are You Providing a Free Appropriate Public Education (FAPE)?

Ten questions you need to ask.

Nationally recognized special education attorney, Melinda Baird, recommends school districts ask the following ten questions to determine if they are providing a free appropriate public education to their ESE students:

1. Do the IEP goals and objectives/benchmarks correspond to the most recent evaluative data and teacher/parent input?
2. Has the child been properly assessed in all areas of suspected disability?
3. Does the IEP reflect the child’s amount of progress toward each goal/benchmark?
4. Is the child making adequate or expected progress toward each goal/benchmark?
5. Does the IEP contain written goals/benchmarks for each area of identified need?
6. Has the IEP team developed a written behavior intervention plan for the student, if the student’s behavior is impeding his ability to learn?
7. Can the district or local educational agency document that the IEP and behavior intervention plan are being fully implemented by all staff?
8. Have you provided written parental notice?
9. Have you explained the procedural safeguards to the parents and provided a copy of these to the parents?
10. Has the full IEP team considered all evaluation reports obtained by the parents and all requests made by the parents?

Source: The Law Office of Melinda Baird ■

Removal of Disruptive Students From Class

By Jim Robinson, School Board Attorney

Section 1003.32(3)-(7), F.S. (2003), permits a teacher to remove a student who is "disobedient, violent, abusive, uncontrollable or disruptive" from the class provided that the student's behavior interferes with the teacher's ability to communicate effectively with students in the class or with the ability of classmates to learn. This matter is addressed in **School Board Policy 4.24**, which is referenced in Art. XIII, paragraph D of the Collective Bargaining Agreement with the Pinellas Classroom Teachers Association. Pursuant to the policy, the teacher should complete a Notice of Intent to Remove Student From Class form. This form includes the teacher's summary statement and record of interventions, parent contacts and guidance or administrative referrals. The form then is submitted to the principal for alternative placement of the student. The principal or designee then will communicate to the parent/guardian that the child's teacher has recommended the student for removal from that teacher's class.

Once the student is removed, the principal may discipline the student but may not return the student to the teacher's class without the teacher's consent unless the Placement Re-

view Committee determines that such placement is the best or only available alternative. If the teacher refuses consent, the Placement Review Committee must render a decision within five (5) school days of the removal of the student from the classroom.



The Placement Review Committee is composed of a least three (3) members, including at least two teachers, one selected by the school's faculty and one selected by the teacher who has removed the student. The third is a staff member selected by the principal. If the teacher will not agree that the student may return to his or her class and the committee finds that the teacher's class is not the only or best available alternative, the student may not return to that class, and the principal must move the student to another classroom.

If the committee's decision is to return the student to the teacher's

class, then the teacher may appeal that decision to the superintendent. The superintendent's decision is final.

The principal must notify each teacher in the school about the availability, the procedures and the criteria for the Placement Review Committee. According to state statute, any teacher who removes 25 percent of his or her total class enrollment shall be required to complete professional development to improve classroom management skills. Additionally, in Pinellas County, any teacher who removes 15 percent of his or her total class enrollment may be required to complete professional development to improve classroom management skills. It is suggested that the behavior management component offered by the Pro Ed Department be utilized.

The principal must report on a quarterly basis to the superintendent (who will report to the school board) each incidence of a teacher's withholding consent for a removed student to return to the teacher's class and the disposition of the incident, and the superintendent must annually report this data to the Department of Education. ■

Moment of Silence

By David Koperski, Assistant School Board Attorney

Many of our schools, after the recitation of the Pledge of Allegiance, observe a brief moment of silence. With the religion-related court cases that have made headlines in the past year, some employees and members of the public have inquired about this practice. At the heart of this legal issue is the Establishment Clause of the First Amend-

ment to the U.S. Constitution, which, through the Fourteenth Amendment, makes it unconstitutional for a state or state agency (such as our school district) to enact measures deemed to "establish a religion." All courts agree that classroom prayers led by teachers violate this provision. However, moments of silence in public schools have withstood constitutional challenges in many courts because

this practice was not deemed state-sponsored religion. If a student wished to silently pray or meditate, she could do so; on the other hand, if a student did not wish to pray, then he could quietly reflect on the upcoming day or just do nothing. In other courts, moments of silence were struck down due to the clear religious rather than secular legisla-

(Continued on page 4)

**PINELLAS COUNTY
SCHOOL BOARD
ATTORNEY'S OFFICE**
301 Fourth St. SW
Largo, FL 33770
Phone: 727-588-6220
Fax: 727-588-6514
E-mail: davisme@pcsb.org

Legal Staff Members

James A. Robinson, School Board Attorney
David A. Koperski, Assistant School Board Attorney
Laurie A. Dart, Staff Attorney
Betty Turner, RP, Paralegal
Kerry Michelotti, Legal Secretary
Barbara Anson, Legal Secretary
Melanie Davis, Clerk Spec II - Newsletter Publisher



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

Moment of Silence
(Continued from page 3)

tive purposes behind those states' laws.

Florida law specifically states school boards can allow a "brief period, not to exceed 2 minutes, for the purpose of silent prayer or meditation be set aside at the start of each school day or each school week in the public schools in the district." See F.S. 1006.45(2). Consistent with this law, the Pinellas County School Board has adopted **policy 6.13(2) Patriotic Observance**, stating, "Immediately following the daily patriotic exercises, those students and faculty members who wish to observe a brief period of silence for reflection or recollection, which shall not be construed as a religious observance, shall be given such opportunity." ■

Next in importance to freedom and justice is popular education, without which neither freedom nor justice can be permanently maintained.

James A. Garfield, July 12, 1880 US general & politician (1831-1881)

Non-renewal, Suspension and Dismissal
(Continued from page 1)

as a result of inefficiency or incapacity.

... Inefficiency means repeated failure to perform duties prescribed by law, repeated failure on the part of a teacher to communicate with and relate to children in the classroom, to such an extent that pupils are deprived of minimum educational experience; or repeated failure on the part of an administrator or supervisor to communicate with and relate to teachers under his or her supervision to such an extent that the educational program for which he or she is responsible is seriously impaired.

○ Incapacity means a lack of emotional stability, lack of adequate physical ability, lack of general educational background, or lack of adequate command of his or her area of specialization.

... Immorality is defined as conduct that is inconsistent with the standards of public conscience and good morals, which brings the employee or the education profession into public disgrace or disrespect and impairs the employee's service in the community.

... Gross insubordination or willful neglect of duties is defined as a constant or continuing intentional refusal to obey a direct order, reasonable in nature, and given by

and with proper authority.

... Drunkenness is defined as:

- That condition which exists when an individual publicly is under the influence of alcoholic beverages or drugs to such an extent that his or her normal faculties are impaired; or
- Conviction on the charge of drunkenness by a court of law.

... Moral turpitude is a crime evidenced by an act of baseness, vileness or depravity in private and social duties. The doing of the act itself, and not its prohibition by statute, fixes the moral turpitude.

Once the term of the annual contract expires, no cause is required for non-renewal, and the employee has no right to continued employment beyond the 1-year term. While non-renewal may be based on no reason whatsoever, it may not be based on the wrong reason. An obvious example of a wrong reason would be non-renewal based on race, color, religion, age, sex, national origin, or disability.

Thus, the way in which non-renewal is handled is very important. Procedures established by the Office of Professional Standards should be strictly adhered to. Terms and conditions of the Collective Bargaining Agreement must also be satisfied. ■