

Legally Speaking

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VOLUME VII, ISSUE 1

Fall 2006

*Law is order,
and good law
is good order.
Aristotle*

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**PINELLAS COUNTY
SCHOOLS**

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Investigation of School Board Employees for Child Abuse, Abandonment or Neglect

By Jim Robinson, School Board Attorney

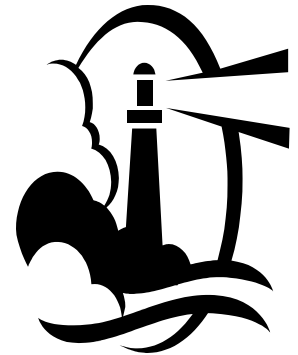
Chapter 39 of the Florida Statutes governs proceedings relating to children. Part III governs protective investigations involving child abuse, abandonment and neglect by a parent, legal custodian, caregiver or "other person responsible for the child's welfare." With a change in the law in 2006, Section 39.01(47) changed the definition of the term "other person responsible for the child's welfare" as follows:

"Other person responsible for a child's welfare" includes the child's legal guardian, legal custodian, or foster parent; an employee of any school, public or private child day care center, residential home, institution, facility, or agency; or any other person legally responsible for the child's welfare in a residential setting... "

The law used to read "an employee of a private school." What does this mean for employees of Pinellas County Schools?

Before the change in the law, the district's Office of Professional Standards and the local law enforcement agency with jurisdiction investigated allegations of child abuse, abandonment or neglect by public school employees during working hours. The district is now in the

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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.

Handling Custody Disputes at School

By David Koperski, Assistant School Board Attorney

One of the most common requests from building staff members pertains to the district's responsibilities when faced with conflicting demands over student custody, visitation rights and student records. Section 1001.21, F.S., defines "parent" to mean "either or both parents of a student, any guardian of a student, any person in a parental relationship to a student, or any person exercising supervisory authority over a student in place of the parent."

Disagreement between parents can be quite contentious. All too often the school

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Focus on the Supreme Court

By Jim Robinson, School Board Attorney

2005-2006 Term

Burden of Proof under the Individuals With Disabilities Education Act (IDEA). In *Schaffer v. Weast*, 126 S.Ct. 528 (Nov. 14, 2005), the court held 6-2 that the IDEA requires that the party requesting a due process hearing to challenge an individualized education plan (IEP) bears the burden of proof on the merits of the challenge. Having placed the burden on schools might have required them to produce testimony and other evidence to fully justify the entire contents of an IEP in a parent-initiated due process hearing

even though the parent's challenge might have been narrowly directed to one or two terms of the IEP. This ruling is likely to save districts significant expenses in defending due process hearings and also should encourage parents from participating in what should, after all, be a collaborative effort to produce an IEP as part of a team effort. It is hoped that the decision will discourage litigation under the IDEA.

Expert Fees Under IDEA. In *Arlington Central School District v. Murphy*, 126 S.Ct. 2455 (June 26, 2006) the court held 6-3 that the IDEA

does not require school districts to reimburse parents who prevail in special education disputes for the costs of experts—costs that can sometimes reach enormous amounts. The court noted that IDEA provides for the recovery of reasonable attorney's fees but found no support in the language of IDEA for the award of expert fees (e.g., educational consultants). As a result, districts are less likely to have to hire their own experts to refute parents' experts, thus avoiding undue expense and the proverbial "battle of the experts."

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Investigation of Employees ...

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process of negotiating an interagency agreement with a number of local law enforcement agencies, including the Pinellas County Sheriff's Office, which is the local agency required to perform child abuse, neglect and abandonment investigations in Pinellas County, including institutional investigations of school board employees suspected of child abuse, neglect or abandonment. The district's Office of Professional Standards will continue to conduct its own investigation into such matters, and local law enforcement officials with jurisdiction over the incident will reserve the right to do the same. However, all such investigations will be carefully coordinated and conducted in a spirit of cooperation and sensitivity to the subject matter.

The interagency agreement will have as one of its central purposes the protection of the rights of teachers and members of the instructional staff pursuant to Sec. 1003.32(1)(j), F.S., to use "reasonable force" to protect themselves or others from injury. Such "reasonable force" shall not constitute child abuse by definition. The agreement also will recognize that, pursuant to Sec. 1006.11(2), F.S., except in cases of exces-

sive force or cruel and unusual punishment, a teacher or other member of the instructional staff, a principal or the principal's designated representative or a school bus driver shall not be civilly or criminally liable for any action carried out in conformity with the State Board of Education and School Board rules regarding the control, discipline, suspension, and expulsion of students, including but not limited to, any exercise of authority under Secs. 1003.32 or 1006.09, F.S.

We will keep you informed of the progress of the negotiations on the development of the agreement.

Please remember that school teachers, school officials or other personnel remain mandatory reporters under the law. There is no change in that regard. So, as a school teacher, school official, or other school personnel, if you have reasonable cause to suspect that a child is abused, abandoned or neglected by a parent, legal custodian, caregiver or "other person responsible for the child's welfare" (e.g., a fellow teacher, school official or other school personnel), you must call the toll-free hotline (1-800-96-ABUSE). The law requires that reporters in this category provide their name to the hotline staff. However, pursuant

to Sec. 39.202(5), F.S.,

"The name of any person reporting child abuse, abandonment, or neglect may not be released to any person other than employees of the department responsible for child protective services, the central abuse hotline, law enforcement, the child protection team, or the appropriate state attorney, without the written consent of the person reporting. This does not prohibit the subpoenaing of a person reporting child abuse, abandonment, or neglect when deemed necessary by the court, the state attorney, or the department, provided the fact that such person made the report is not disclosed...."

Finally, School Board Policy 4.25(1)(a) requires that, if the person making the report is not the building administrator, the reporting individual notify the building administrator immediately. Policy 4.25, entitled *Child Abuse, Molestation, Neglect*, should be carefully reviewed for other requirements applicable to all district employees and volunteers.

School social workers will be conducting training at their faculty meetings to go over mandatory reporters' responsibilities in more detail. ■

Student Searches and Seizures

By David Koperski, Assistant School Board Attorney
and Laurie Dart, Staff Attorney

We receive many questions regarding student searches in schools or at off-campus school events. While the facts are unique in each case and we recommend contacting our office or your area office with specific questions, the law of student searches is fairly settled. This article will provide a brief summary of the law in this area and test your knowledge with a short quiz.

The Fourth Amendment to the U.S. Constitution protects citizens from unreasonable searches and seizures and requires that search warrants be based upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized. These constitutional protections apply in public schools, although not necessarily to the same extent they would on a street corner or in a public park.

So, while public school students are protected from unreasonable searches and seizures, the question remains as to what level of protection applies. In the 1985 case of *New Jersey v. T.L.O.*, the U.S. Supreme Court ruled that school officials need only possess "reasonable suspicion," as opposed to "probable cause," in order to justify a search or seizure of a public school student. The Court recognized the unique status of public schools in our society and the need to protect the learning environment. Based upon these reasons, the court concluded that school officials do not need a warrant or probable cause before searching a student suspected of breaking school rules or committing a crime.

The court outlined a two-prong test to determine whether a school official has reasonable suspicion. First, the search must be justified at its inception. This prong is met if there are reasonable grounds for suspecting the search will turn up evidence

that the student has violated or is violating the law or school rules. In practice, the more severe or imminent the threat (for example, a gun), the more latitude will be given to search. Second, the search must be reasonably related in scope to the objectives of the search and not excessively intrusive in view of the age and gender of the student and the nature of the infraction.

Florida statutes codify this student search standard. See F.S. 1006.09 (9). Also, Florida courts have clarified that the lower "reasonable suspicion" standard even applies to law enforcement officers employed by outside police departments who are working as full-time school resource officers in our schools. The Florida attorney general's office has published a guidance manual on student searches titled "School Search Manual," available online at <http://www.myfloridalegal.com/crime>. Of course, if a student gives oral or written consent to the search, then reasonable suspicion is not required -- thus, we recommend you always first ask the student if you may search the bag, car or other item but that you search it anyway so long as you have reasonable suspicion.

We invite you to take the following quiz to test your knowledge of student searches. The short fact patterns and answers are taken from actual court cases. Good luck!

Q1. Upon arriving at school, students A and B informed an AP that student C had ecstasy pills in his bookbag. May the AP search student C? If so, what can she search?

A1: The AP only may search student C's bookbag based on the tips that the drugs were in the bookbag. However, only credible tips may be relied upon. So, if the tip was from a known enemy of the alleged perpetrator, additional investigation prior to the search is recommended.



Q2. Two students, X and Y, were in a fist fight with no weapons visible. The students were placed alone in separate rooms to be interviewed. After X was in her room alone for three minutes, an administrator came in and saw that X looked "startled" and "surprised" and put her purse under her arm and her jacket over her shoulder, appearing to hide her purse. The administrator normally does not search students after a fight, and no complaints of weapons or drugs had been made against X. Can the administrator search X's purse?

A2: No, the court ruled that searches must be based on objective, articulable grounds, not "mere hunches."

Q3. A teacher saw student X carrying a hunting crossbow into a back door of the school. The teacher told the principal and the principal searched the student's locker, found the crossbow and also opened a small satchel hanging on a hook in the locker, finding marijuana. Were the searches valid?

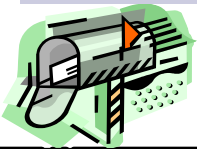
A3: The search for the crossbow was valid based upon the credible testimony of the teacher, but the search of the satchel was invalid because there was no reasonable suspicion any rule or law was being broken except the possession of the crossbow. Even if the crossbow was not in student X's locker, the search of the satchel still would be invalid because the search would not be related in scope to the objective of the search, since the small satchel could not hold the larger crossbow. ■

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

Focus on the U.S. Supreme Court ...

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2006-2007 Term

Use of Race in Assignment Plans. In *Meredith v. Jefferson County Board of Education*, 416 F.3d 513 (6th Cir. 2005), *cert. granted* 74 U.S.L.W. 3437 (June 5, 2006), and *Parents Involved in Community Schools v. Seattle School District No. 1*, 426 F.3d 1162 (9th Cir. 2005), *cert. granted*, 74 U.S.L.W. 3425 (June 5, 2006), the court will determine whether and how the use of race as a factor in student assignment plans violates the Equal Protection Clause of the Fourteenth Amendment.

In *Meredith*, the plan seeks to enroll at least 15% black students and no more than 50% black student in each school. The Sixth Circuit upheld the district court's decision that these parts of the plan, did not violate the Fourteenth Amendment. The district court found that the school board stated numerous compelling reasons for its race-conscious student assignment plan and concluded that most of the plan was narrowly tailored, that the racial guidelines were "quite flexible" and not a quota, that the plan was not used to harm any particular person because of his or her race, and that the district used a number of race-neutral strategies to achieve its goals.

In *Parents Involved in Community Schools*, the Ninth Circuit upheld Seattle School District's student assignment plan, which uses race as the second of four "tiebreakers" when a high school has more applicants than available seats. Applying strict scrutiny, the court found that the two interests promoted by the district, the benefits of racially diverse schools and avoidance of racial isolation, were compelling state interests, and that the district's plan was narrowly tailored to achieve its intended purposes. The Ninth Circuit found the plan was needed to avoid segregation based on housing patterns and that the district made a good faith effort to consider race-neutral alternatives. The court also found that plan is subject to periodic review to determine if it is responsive to constituents' concerns.

Obviously, the outcome of these cases directly will affect school districts that have adopted, or would consider adopting, student assignment plans that use race as a factor. ■

Handling Custody Disputes ...

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administration is placed in the middle and forced to respond to conflicting demands by a biological or stepparent, a "significant other," a grandparent or other relative. Faced with this, it is important for school officials to carefully evaluate the rights of the parties. While a conference with the parents often may resolve the problem, this is not always the case, and a decision nevertheless must be made. Here are a few tips to guide you:

1. Consult School Board Policy 4.28, *Releasing a Student from School*, to determine if the question can be answered easily. The policy states that, in the case of divorced or separated parents, only the primary residential parent may remove the student from school grounds unless the non-primary parent either has consent of the primary parent or a court order allowing the non-primary parent to remove the student. Further, both parents retain the right to view and copy student records unless a court order specifically states that a parent may not view student records or the school reasonably

believes the student may be in danger if the information is released.

2. When faced with conflicting demands by parents with equal residential custody (for example, alternating weeks), treat the parent who enrolled the child as the primary residential custodian – this is the best alternative for all parties involved and properly places the burden on the parents to clarify the custody issues in court as opposed to using the school setting to fight their battles.
3. Seek a certified copy of the judgment or order from the parents. Remember that the judgment or order may have been rescinded or modified by the court, so ask both parents if the copy of the order held by the school is the most recent order.
4. A child's name should not be changed without court order or new birth certificate.

This brief guide is not intended as a substitute for consultation with district attorneys. Please call us with your questions and concerns as situations arise. ■