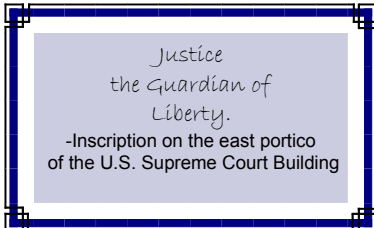


# Legally Speaking

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## Standing for the Pledge

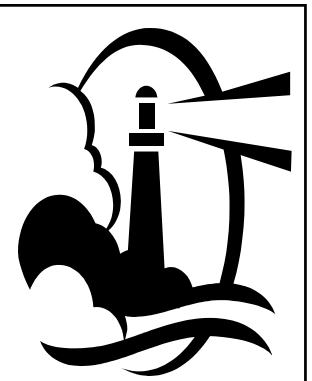
By Laurie Dart, Staff Attorney

A recent federal court case clarified any doubt regarding the constitutionality of a state statute requiring students to stand for the Pledge of Allegiance. In Frazier v. Alexandre, 434 F.Supp. 2d 1350 (S.D. Fla. 2006), the Court concluded that F.S. §1003.44 is unconstitutional. The statute requires that "civilians must show full respect to the flag by standing at attention" stating in relevant part as follows:

... The pledge of allegiance to the flag shall be recited at the beginning of the day in each public elementary, middle, and high school in the state. Each student shall be informed by posting a notice in a conspicuous place that the student has the right not to participate in reciting the pledge. Upon written request by his or her parent, the student must be excused from reciting the pledge. When the pledge is given, civilians must show full respect to the flag by standing at attention, men removing the headdress, except when such headdress is worn for religious purposes ...

Courts throughout the country have addressed similar statutes and school board policies requiring a student to stand during patriotic observances, holding that the refusal to stand is a form of ex-

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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.

## Tis the Season

By Laurie Dart, Staff Attorney

Each year as families prepare to celebrate the holidays, state and local governments, including public schools, struggle with the constitutional issue regarding the appropriate way to acknowledge the holidays without running afoul of the First Amendment's prohibition against the establishment of religion. First Amendment scholars as well as various organizations defending religious liberties and civil rights have named this annual struggle the "December Dilemma" because navigating the proper course between the **endorsement** of religion during the holidays, which is not permitted under the Establishment Clause, and the **interference** with the prac-

*(Continued on page 4)*

# Student Non-Curriculum Clubs and the Equal Access Act — Overview of the Law

By Jim Robinson, School Board Attorney

**P**ursuant to a federal law the Equal Access Act, (20 U.S.C. §§ 4071-74), most student-led, special interest, non-curriculum-related clubs must be allowed to organize in most U.S. secondary schools (in Pinellas, those in which students enrolled in grades 6-12).

The law originally was promoted by conservative Christian groups to allow students to organize religious clubs in public secondary schools but now affects much more than Christian clubs. Ironically, over opposition from the same conservative Christian groups that sponsored the law, the same legislation now is being used to support the right of students to organize:

... Gay, lesbian or bisexual support groups; and

... Other clubs including atheism, Goth culture, heavy metal music, Satanism, Wicca, neopagan, etc.

The Act applies to public secondary schools that:

... Receive Federal financial assistance; and

... Already have "a limited open forum" i.e. at least one non-curriculum-related student club that meets outside of class time. Chess, model building, political, religious and many similar types of clubs are considered to be non-curriculum based. A French or history club might well be considered to be curriculum related.

The language of the Act is quite clear. Such schools must allow additional clubs to be organized, as long as:

... Attendance is voluntary.

... The group is student-initiated.

... The group is not sponsored by the school itself, by teachers, by other school employees or by the government.

This means that such employees cannot promote, lead or participate in a meeting. However, a teacher or other school employee can be assigned to a group for "custodial purposes."

... The group is not disruptive, i.e. it "does not materially and substantially interfere with the orderly conduct of educational activities within the school."

... Persons from the community may not "direct, conduct, control or regularly attend activities of student groups."

... The group does not engage in vulgar, profane or obscene speech.

The school is required to treat all of its student-led non-curriculum clubs equally:

... Each club must have equal access to meeting spaces, the PA system, school periodicals, bulletin board space, etc.

... School officials have the right to monitor meetings.

... Officials can require all clubs to follow a set of rules, including non-discrimination policies. However, a court has ruled that religious clubs can discriminate against persons of other faiths in their selection of officers.

... The school may limit meeting times and locations but must apply rules equally to all groups.

... The district may prohibit people from the community from attend-

... if the district receives financial support from the Federal government and already has one or more student-initiated, extracurricular clubs on campus, then additional clubs cannot be prohibited.

ing student clubs. However, they must apply this rule equally to all groups.

... The district may prohibit all non-curriculum-related clubs, thus exempting itself from the effects of the Equal Access Act.

Thus, if the district receives financial support from the Federal government and already has one or more student-initiated, extracurricular clubs on campus, then additional clubs cannot be prohibited. One exception would be in the case of a group that can be shown to be disruptive to the educational process. The Equal Access Act and the U.S. Constitution itself protect students' right to the enjoyment of free association and speech. ■



# Posting and Distribution of Non-School Materials

By David Koperski, Assistant School Board Attorney

Periodically, schools receive requests from outside organizations to post or distribute written materials in the school. In order to provide consistency in the schools' responses, **School Board Policy 6.07, Non-School Related Publications**, outlines the procedures for approval and posting and/or dissemination of these materials. If you receive a request from an outside group, the first thing you should do is consult the policy, available on the district website at <http://www.pinellas.k12.fl.us/planning/toc1.html>.

Under the policy, all requests and materials first must be approved by the "superintendent or designee" and then approved by the school principal. The first level of approval is with the subject area supervisor (if you are not sure who that might be, contact your director of operations), whom the superintendent has designated to act for him. Grounds for denial of this approval include, but are not limited to, violation of Board policy (such as commercial advertising), obscenity, profanity, vulgarity and any other form of unprotected speech. Following this approval, the

director of operations will issue a letter authorizing the organization or individual to approach school principals in order to request permission to post or distribute non-school-related publications in their particular school.

The second level of approval lies with the building principal. Grounds for denial of this level of approval include, but are not limited to, handling and dissemination concerns, staff availability and conflicts with established individual school events calendars. The building principal should not refuse to distribute the materials because she or he disagrees with the content of the materials if the director of operations previously had approved it. Rather, the principal's authority to deny is tied to building-based concerns, such as copying, staff time, and other logistical issues.

Assuming the principal grants approval, copies of the materials should be delivered to the school by the organization or individual and left with the principal for posting or dissemination. Copies should then be posted where other announcements



are posted or placed in an accessible area and a simple announcement of their availability made to the students. We are not required to, nor should we, act as agents of the outside organization and actually take time to pass out the materials to students or the staff.

By adopting this policy, the Board has opened the school doors to outside materials so long as the materials meet certain standards and posting does not unduly tax our staff resources. Under the First Amendment forum analysis governing this issue, the Board could close its doors completely to all outside materials, but then some materials that most parents and students would want available could not be posted. If ever in doubt as to the meaning of the policy, please contact the School Board Attorney's Office. ■



"Parents, students, families, educational institutions, and communities are collaborative partners in education, and each plays an important role in the success of individual students...."  
 § 1000.03(5)(f), F.S.

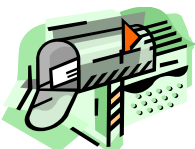


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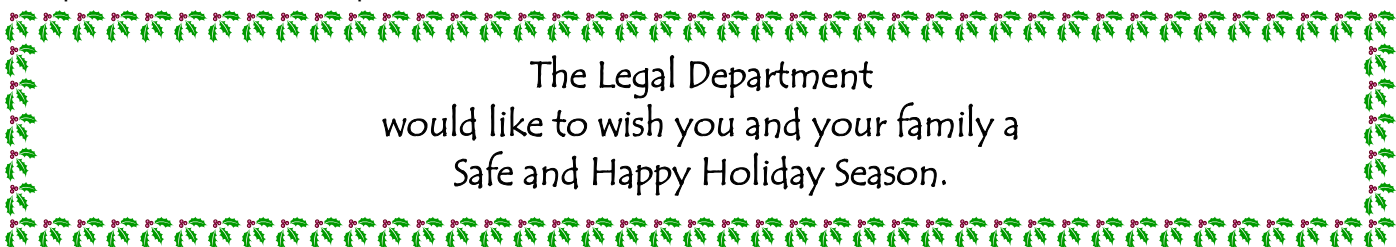
***Standing for the Pledge ...***

*(Continued from page 1)*

pression protected by the First Amendment to the United States Constitution, but never have directly addressed Florida's statute. For example, in Banks v. Board of Instruction of Dade County, 314 F. Supp. 285 (S.D. Fla. 1970), *vacated by* 401 U.S. 988 (1971), *reinstated without published opinion by dist. ct. and aff'd*, 450 F.2d 1103 (5<sup>th</sup> Cir. 1971), the Court ruled that the school board policy requiring that a student stand for the pledge was unconstitutional and compared the student's refusal to stand to the infamous Supreme Court case of Tinker v. Des Moines, in which a student refused to remove a black armband worn as a protest against the Vietnam war. The Banks court stated that: "His refusal to stand was no less a form of expression than the wearing of the black armband was to Mary Beth Tinker. He was exercising a right 'akin to pure speech.'" *Id.* at 295. In an earlier issue of "Legally Speaking" (Vol II, Issue 3, page 3), we stated that Florida's statute was not constitutional because it conflicted with the First Amendment of the United States Constitution. Now, the federal court in Florida has confirmed that opinion.

**Pinellas County School Board Policy 6.13** does not require that a student stand for the pledge but rather states that he or

she "should maintain a respectful silence, refraining from any act that would interfere with such observances." As long as students are not disruptive, they may stand and recite the pledge or remain silent and seated. Our Constitution protects both forms of expression. ■



The Legal Department  
would like to wish you and your family a  
Safe and Happy Holiday Season.

***Tis the Season ...***

*(Continued from page 1)*

tice of religion, which is not permitted under the Free Exercise Clause, can be challenging. We have addressed the "December Dilemma" in a previous issue of "Legally Speaking" (Vol 1, Issue 2, page 1), and although our advice has not changed, a seasonal reminder is always helpful.

Schools do not need to avoid religion in their holiday events but need to be sure that the event, whether it is a concert, play or assembly, is presented objectively and does not have the effect of endorsing, advancing or inhibiting religion. What does this mean? It means that music about Christmas, Hanukkah, Eid al Adha or any other religious holiday may be included in a program, but it should be included in the program to teach children about the different religions and cultures and may not dominate the program. Public schools must advance a secular educational purpose and people of all faiths or no faith should feel included in the program. In short, the holiday music program can include some religious music but should include a variety of other songs as well.

Another issue is where to draw the line on seasonal displays and decorations. Basically, public schools should avoid decorating with religious symbols. For example, symbols of an angel or a menorah are not appropriate in the public school even though courts have upheld the use of these symbols as part of an overall holiday display in other contexts. The Christmas tree and Santa Claus, on the other hand, once may have carried religious connotations but are routinely treated by courts as secular symbols that are permitted in holiday displays, as are wreaths and garland.

All schools should enjoy the holidays. While there is no need to ban all references to religion, just be sure to plan festivities that are educational and respectful of all beliefs. ■