

# Legally Speaking

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*The language of law must not be foreign to the ears of those who are to obey it.*  
- Judge Learned Hand

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## School Board Liability for Student Injury or Death Resulting from Accidents at Dangerous Locations

Jim Robinson, School Board Attorney

**T**he Pinellas County School Board is in litigation involving the death of a student after being dropped off at a designated bus stop located on a busy thoroughfare. The question arises as to whether the school board can be held liable for designating bus stops that later are determined to pose a safety hazard to a particular child.

Sec. 1006.22, F.S., requires that the school board give maximum regard for safety and protection when providing for the transportation of students. However, school boards are granted great latitude in establishing the location of school bus stops. The Florida Supreme Court has held in the case of Harrison v. Escambia County School Board, 434 So. 2d 316 (Fla. 1983), that deciding where school bus stops will be located is, under the doctrine of sovereign immunity, a decision that will not give rise to tort liability against the school board. The court stated,

“ . . . [T]o require the school board to decide on school bus stop locations under the threat of tort liability in the event a judge or jury at some later date might determine that the chosen location constituted a safety hazard to an individual child injured en route to it, would present some difficulties. It is obvious that some potential for injury to a child would exist at



### 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.

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## Violations on School Property and Trespassing

Laurie Dart, Staff Attorney

**I**n a previous issue of *Legally Speaking*, (Volume III, Issue 3), an article discussed the fact that a “trespasser” may be asked to leave school property by the principal or the principal’s “designee” and, if he or she fails to abide by the “trespass warning,” he or she can be taken into custody. A trespasser can be 1) a person who does not have legitimate business on school property, or 2) a person who is not otherwise authorized, licensed or invited to be on school property, or 3) a sus-

(Continued on page 4)

# Contracts with the School District – Part I

## The Basics

David Koperski, Assistant School Board Attorney

This is the first in a series of articles relating to contracts in the school district and will discuss the basics of contracts, including the definition of a contract and the legal requirements of a binding contract. Future articles will discuss who has the authority to execute contracts in the district, our Board's policy statements regarding contracts and mechanisms for enforcement of contracts. Because the law of contracts is at the heart of most School Board business dealings, it is one of the most significant areas of legal concern and can involve variations on circumstances and complexities.

What is a contract? Contracts may take different names, but they are nonetheless contracts and subject to the same rules as all others. Such instruments include, for example, purchase orders, agreements, memoranda of agreement, memoranda of understanding, interlocal agreements, change orders or any other written agreement, however titled. In general, a contract is any agreement between two or more parties in writing (we will exclude oral contracts for purposes of this article) with specific terms, including a promise to do something in return for a valuable benefit known as "consideration" that usually takes the form of money or some return promise of action. More specifically, the existence of a written contract requires finding the following factual elements:

- 1) an offer;
- 2) an acceptance of that offer that results in a "meeting of the minds;"
- 3) consideration;
- 4) specific provisions relating to performance, such as time and place of delivery or specific quality of product; and
- 5) a written instrument stating the terms of the agreement and signed by both parties.

In general, a contract is any agreement between two or more parties ... with specific terms, including a promise to do something in return for a valuable benefit known as "consideration" ...

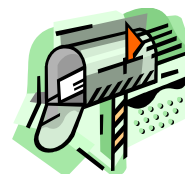
To illustrate, take an example of a food company, Greens R Us, that wants to sell the school district 1,000 pounds of USDA Grade B brussel sprouts. Putting aside competitive bidding and other rules that may apply between merchants or to food products, let us review when a contract arises, if at all. Greens R Us personnel call the district stating they will sell us the produce for \$600. and deliver it in 20 days – this is the offer. We can accept, reject outright or submit a counter-offer. Assume we counter-offer, telling the company we only will buy USDA Grade A brussel sprouts, will only pay \$550. and need them delivered within 10 days. If Greens R Us changes any of the terms of our counter-offer, such as offering 15 days delivery, the parties are back to step one and neither party can require the other to go back to one of their prior offers. On the other hand, if Greens R Us accepts our counter-offer, the parties have met all the requirements of a written contract, except for the writing and signing. Some contracts must be in writing to be valid, including our



brussel sprouts contract, real estate contracts, and a variety of other contracts.

Our contracts not only contain promises to pay money in exchange for goods or services but most often include other agreements such as limitations on liability for breach of the contract, the identity of staff members who will administer the contract, the law that will govern construction of the contract terms in the event of a dispute and the location (venue) where any lawsuit will be brought to enforce the contract in the event of a default. While these provisions are not needed to form a valid contract, they protect the district and limit its exposure to liability.

In the next installment of this series, we will discuss who has the authority to execute contracts in the district when contracts must go the Board, our Board's policy statements regarding contracts and mechanisms for enforcement of contracts. ■



Please send comments or suggestions for future articles to Melanie Davis at [davisme@pcsb.org](mailto:davisme@pcsb.org).

## The Legal Department – At Your Service

Jim Robinson, School Board Attorney

**F**or those of you who are new to the district or simply have not had occasion to call on us for assistance or advice, we would like to provide a summary of our department. The legal department consists of two separate but related offices – the School Board Attorney's office and the Staff Attorney's office.

The School Board Attorney is hired by and reports to the School Board. The School Board Attorney's office is comprised of the School Board Attorney, the Assistant School Board Attorney, Paralegal, Legal Secretary, and Clerk Specialist II. Among other duties and responsibilities, the School Board Attorney:

... Advises the School Board and Superintendent on all legal matters relating to the operations of the district.

... Cooperates with and advises, where appropriate, the Staff Attorney on all legal matters involving the school district.

... Represents the School Board in all litigation when so directed by the School Board, including but not limited to administrative hearings, civil matters and constitutional issues.

... Coordinates work performed by outside counsel in preparing, plan-

ning and representing the Superintendent, School Board or School Board employees in litigation.

... Reviews, supervises and approves the work of outside counsel in the provision of legal services to the district.

... Attends and serves as parliamentarian at all School Board meetings.

... Recommends changes in policies and procedures to ensure compliance with applicable federal and state laws and Department of Education regulations.

... Coordinates with district administration in-service training on legal matters that pertain to the overall administration of the school system.

... Provides legal advice to district administrators as needed on carrying out policies and procedures established and approved by the Board.

... Provides regular reports to the Superintendent and the Board on the status of all litigation, including expenses incurred in such litigation.

The Staff Attorney is hired by and reports to the Superintendent. This office is comprised of the Staff Attorney and a Legal Secretary, but both

the Paralegal and the Clerk Specialist II offer assistance to the Staff Attorney as needed. The Staff Attorney's duties and responsibilities include representing the Superintendent in prosecuting employee discipline and student discipline cases. The Staff Attorney also provides general legal advice and representation to the administrative staff, especially those at the various schools. The School Board Attorney's office and the Staff Attorney's office confer daily and cooperate in addressing legal issues facing the district, making sure to avoid conflicts in matters such as employee discipline and student discipline cases in which each office serves a separate and distinct function.

It is the mission of the legal department to provide the highest quality legal services to the School Board and district by ensuring timely and accurate legal advice and effective representation on all legal matters. While the legal department does not dispense personal legal advice, if you have a legal matter relating to district business, you should raise it with your supervisor and he or she may pass it along to the appropriate attorney. Additional information may be obtained at our site on the district's website at <http://www.pinellas.k12.fl.us/attorney/>. ■

*It was the boast of Augustus that he found Rome of brick and left it marble.  
But how much nobler will be the sovereign's boast when he shall have to say that  
he found law a sealed book and left it a living letter;  
found it the patrimony of the rich and left it the inheritance of the poor;  
found it the two-edged sword of craft and oppression and  
left it the staff of honesty and the shield of innocence.*

*- Henry Brougham, Jurist*

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***School Board Liability***

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any location where motor vehicle traffic exists, yet it would be totally impracticable and indeed impossible to locate a bus stop at any place where this would not be true." ... "[S]ufficient justification exists for a holding that the school board's function in selecting school bus stop sites is not one that should 'be subject to scrutiny by judge or jury as to the wisdom of their performance.'"

Accordingly, the Florida Supreme Court held that the designation of bus stops is a planning level decision for which immunity from liability applies. The court noted that to avoid the School Board's immunity, a plaintiff would have to allege specifically the existence of a known dangerous condition that, created by the school board and not being readily apparent, constitutes a trap for the unwary. Under such circumstances, the school board would be under a duty to warn parents and students of such a condition. As a practical matter, the school district would under such circumstances move the bus stop to eliminate the risk of injury or death. ■

***Violations on School Property ...***

*(Continued from page 1)*

pending or expelled student. See, Sec. 810.097 (1) Florida Statutes. If convicted, the trespasser is guilty of a second-degree misdemeanor, punishable by a fine of not more than \$500 or imprisonment of not more than 60 days.

A trespasser also can be a person who originally enters the school property for a legitimate business reason, such as a parent or student, but refuses to leave after being told to do so. Generally, a parent or student would not be asked to leave the campus by school personnel unless he or she creates a disturbance or disruption at the school. In such cases, the disruptive parent or student who refuses to leave the property (the trespasser) may be guilty of a first-degree misdemeanor, punishable by a fine of not more than \$1,000 or imprisonment of not more than one year. See Sec. 810.097 (2) Florida Statutes.

In addition to trespassing, a person who becomes disruptive on school property may be in violation of another law that prohibits disrupting school administration or functions. Specifically, under this statute it is unlawful:

- (1) Knowingly to disrupt or interfere with the lawful administration or functions of any educational institution or, school board or activities on school board property in this state.
- (2) Knowingly to advise, counsel or instruct any school pupil or school employee to disrupt any school or school board function or activity on school board property or classroom.
- (3) Knowingly to interfere with the attendance of any other school pupil or school employee in a school or classroom.
- (4) To conspire to riot or to engage in any school campus or school function disruption or disturbance that interferes with the educational processes or with the orderly conduct of a school campus, school or school board function or activity on school board property.

The statute does not deny public employees the opportunity to exercise their rights of union organization or negotiation and is not intended to regulate the content of people's speech. Rather, as concluded by one court, it prohibits "any conduct, acts, etc., which are specifically and intentionally designed to stop or temporarily impede the progress of any normal school function or activity occurring on the school's property."

Any person who violates the provisions of this section is guilty of a misdemeanor of the second degree, punishable by a fine of not more than \$500 or imprisonment of not more than 60 days. ■