

Legally Speaking

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Yikes, I've been served with a subpoena!

Laurie Dart, Staff Attorney

The word "subpoena" is a Latin term meaning "under penalty." There are different types of subpoenas: one type may command your testimony at a trial or deposition, and another type, known as a "subpoena duces tecum," may command you to bring certain documents or evidence with you to the court proceeding or deposition. If you are properly served with a subpoena, you need to comply with it. If you do not, the penalty is that you may be held in contempt of court. Under Florida law, a subpoena of any type generally must be handed to you by a person 18 years of age or older who is not a party to the lawsuit or given to someone who resides with you at your home, provided that the person is over 15 years of age. This means that a subpoena should not be sent to you by mail or facsimile transmission, dropped off at your school or left with someone else with instructions to give it to you unless that person is authorized to accept the subpoena on your behalf.

The first couple of questions that you should ask when you receive a subpoena are: What is the nature of this lawsuit or proceeding? What is this subpoena commanding me to do and when am I supposed to do it? As discussed in an earlier issue of "Legally Speaking" (Vol. IV, Issue 3, page 1), we ask that you immediately contact our paralegal, Betty Turner, at 588-6247 if the lawsuit involves a matter in which the school district is a party or otherwise may be involved. If the lawsuit does not involve the district but the subject of your testimony involves your work as a school

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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

Bus Videos and School Surveillance Tapes - Student Records or Law Enforcement Records? Or Both?

Jim Robinson, School Board Attorney

Until this past May, school bus videos and school surveillance videotapes were the responsibility of district and school administrators, respectively, and, accordingly, were student records subject to all of the confidentiality requirements imposed by federal and state law. If local law enforcement wanted to obtain a copy of a bus

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Charter Schools - A Primer

David Koperski, Assistant School Board Attorney

In 1995, the Florida Legislature passed a law allowing the formation of charter schools. Since that time, there have been many changes to the law, and the entire state has seen an increase in the number of charter schools. Charter schools can serve students in grades pre-K through 12. In Pinellas County, six charter schools are operating, and new applications are received every year.

An application for a new charter school may be made by an individual, teachers, parents, a group of individuals, a municipality or a legal entity organized under the laws of this state. A private school, parochial school or home education program is not eligible for charter school status.

A charter school may be formed by creating a new school or converting an existing public school to charter status. Charter schools are public schools using public funds that must meet many of the same standards as regular public schools relating to curriculum, financial management, class-size reduction, and being non-discriminatory and non-religious. However, they differ from Pinellas County Schools in many ways. First, each charter school is a separate not-for-profit corporation with its own board of directors, which is analogous to our school board. A charter school selects its own employees, although a charter school may contract with the school district for the services of personnel. In either case, the charter's employees are not subject to the district's rules and regulations. Likewise, the charter's students are governed by the charter's rules, not the district's "Code of Student Conduct" (unless the school adopts it as policy).

Teachers employed by or under contract to a charter school must be certified as required of other public

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school teachers. A charter school may not knowingly employ an individual to provide instructional services or to serve as an education paraprofessional if the individual's certification or licensure as an educator is suspended or revoked by this or any other state. Nor can a charter school knowingly employ an individual who has resigned from a school district in lieu of disciplinary action with respect to child welfare or safety, or who has been dismissed for just cause by any school district with respect to child welfare or safety.

The teachers at a charter school may choose to be part of a professional group that subcontracts with the charter school to operate the instructional program under the auspices of a partnership or cooperative that they collectively own. Under this arrangement, the teachers would not be public employees.

Applicants for approval of a charter school must complete a comprehensive application package, including a detailed curriculum and budget. The application is filed with the Pinellas County School Board, which will become the "sponsor" of the charter school if the application is approved. If the application is denied, the applicant can appeal to the State Board of Education.

If a charter is granted, Pinellas County Schools must provide certain administrative services to the charter school in exchange for a fee allowed under the law, including:



- ... Report the charter's student data to the state.
- ... Assist the charter with the administration of exceptional education student matters (but the charter is responsible for providing the actual special education and related services).
- ... Process teacher certificate data services.
- ... Assist the charter with the administration of the federal school lunch program.
- ... Provide test administration services, including payment of the costs of state-required or district-required student assessments.

Although the funding formula for charter schools is complex, the primary source of funds is the state and local funds associated with the students who attend the charter school, including Florida Education Finance Program (FEFP) and other funding sources. As a simple example, if a charter school has 100 students who would otherwise attend a district school, the funds that the district would have kept for those 100 students must be sent to the charter school, less the small fee for the administrative services the district provides as described above.

Recently, the charter school law was amended to allow a process for charter school applicants to apply for charters from governmental entities other than school districts, such as

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SCHOOL BOARD ADOPTS NEW POLICY GOVERNING ACCESS TO HIGH SCHOOL STUDENTS REGARDING POSTSECONDARY OPPORTUNITIES

Jim Robinson, School Board Attorney

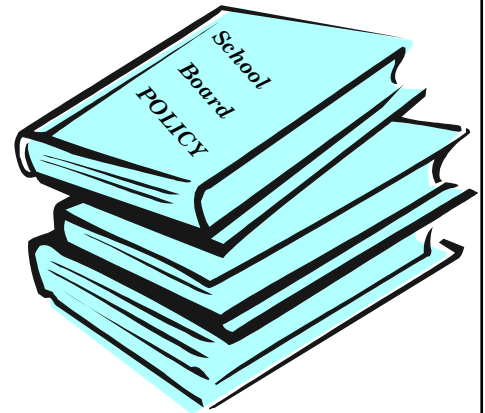
On Aug. 28, 2007, the School Board adopted new **Policy 6.25**, which governs access to high school students on campus to recruit for and share information related to postsecondary opportunities in the U.S. military, postsecondary educational or technical institutions, and other recognized career opportunities. Under federal law, high schools must give military recruiters the same access to high school students on the campus as is provided to other persons or groups who advise students about occupational or educational opportunities. In the case of *Searcey v. Harris*, 888 F.2d 1314 (11th Cir. 1989), the Eleventh Circuit Court of Appeals in Atlanta held that groups that desire to present alternatives to a career in the military service should be allowed access to students as well.

Accordingly, the new policy grants equal access to groups that desire to present an alternative to military service provided they have direct knowledge of the alternative opportunities they seek to promote. Direct knowledge is presumed "if by virtue of [a] person's training, education or ex-

perience, the [person] possesses sufficient knowledge such that the information to be imparted would be of use and benefit to students in making their career choices and understanding the career options available." Such groups may try to discourage students from entering the military by providing students with valid and informative disadvantages of the military career but may not discourage students by denigrating the military career because of its nature or purpose.

All persons accessing students under the new policy must follow each high school's sign in/sign out procedures as well as applicable district policies and procedures regarding presence on school campus.

Groups addressing students on postsecondary career opportunities are limited to two representatives per presentation absent consent of the principal, whose decision is final. Upon arrival at the school, persons must present a valid drivers license or an authorized identification card from the group he or she represents. District or school-issued badges and/or name tags must be worn at all times while on campus.



Please note that the policy makes student participation purely voluntary and limits access to non-instructional time during a regular school day. The policy also gives the principal the discretion to terminate access that becomes or threatens to become disruptive.

All literature and handouts will be cleared in advance by the Region Directors, with advice of the Legal Department.

All presenters will be screened for "direct knowledge" of the opportunities they propose to discuss. Names of cleared individuals will be provided to high school principals. ■

Subpoena

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district employee (e.g., a custody dispute between parents of a child in your class) we ask you to contact us if the subpoena requests that you bring copies of "student records" with you. The reason is that such records are confidential under state and federal law, and we have a duty to confirm the information will be disclosed only in response to a properly issued subpoena and that all required notices have been sent prior to the disclosure of the information. In other cases, you should feel free to contact

us if you would like to discuss the process or the scope of your testimony.

If the date and time identified in the subpoena create an unavoidable conflict in your schedule, you need to contact the district's legal department immediately so that we may undertake efforts on your behalf to either excuse you from attendance or reschedule the date and time of your appearance. Often we can contact the attorneys involved or file a motion to "protect" you during the scheduled time frame or to "quash" the subpoena if it was not issued or served

in compliance with the law. Whether these efforts will be successful depends on a number of factors including whether you are commanded to appear for a deposition or trial, whether the trial is a bench or jury trial, whether the subpoena is in proper form and properly served with reasonable notice and the required witness fee, as well as the nature of the case. If you are served with a subpoena and there are no issues regarding your ability to attend, you should contact your supervisor and obtain approval for "temporary duty elsewhere" in compliance with Board **Policy 8.17**. ■

**PINELLAS COUNTY
SCHOOL BOARD
ATTORNEY'S OFFICE**

301 Fourth St. SW
PO Box 2942
Largo, FL 33779-2942
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

Charter Schools

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counties, cities or even the state. However, that amendment provides an option for school districts that want to retain the exclusive authority to grant charters. Those districts that wish to retain this authority were asked to apply to the State Board of Education – Pinellas County Schools recently filed its application to retain this exclusive authorizer status, and a decision is pending.

In conclusion, charter schools are public schools that receive initial approval and certain assistance and oversight from the district, but they are, as intended by the law, operated independently of the school district. ■

"There never has been devised, and there never will be devised, any law which will enable a man to succeed save by the exercise of those qualities which have always been the prerequisites of success - the qualities of hard work, of keen intelligence, of unflinching will."

Theodore Roosevelt (1858-1919)



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

Bus Videos

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video in connection with an ongoing investigation, the district could not release the video without first obtaining a subpoena and then affording reasonable notice of the subpoena to the parent.

In May, Dr. Clayton M. Wilcox, Superintendent transferred responsibility for the creation and maintenance of bus and school surveillance videos to the Pinellas County Schools Police, a law enforcement unit within the meaning of the Family Educational Rights and Privacy Act (FERPA). FERPA specifically exempts from the definition of "educational records" those records that are created and maintained by law enforcement units for law enforcement purposes. Thus, the designation of school bus videos and school surveillance videos as law enforcement records means that such tapes made by the Pinellas County Schools Police (as well as by our school resource officers) are not confidential student records, unless they are used for a purpose other than law enforcement. As law enforcement records, the tapes may be shared by Schools Police without the need or a subpoena, subject to applicable law governing the confidentiality of law enforcement records during criminal investigations and prosecutions.

If Schools Police were to provide a copy of a bus video to an assistant principal for use in a disciplinary proceeding, the video then would become both a student record and a law enforcement



record. Schools Police could provide it to a third party as noted before without the need for a subpoena. However, in the hands of school administration, the tape would enjoy the full protections afforded student records under federal and state laws, and could not be given out absent a subpoena, court order, bona fide emergency or other statutory exception.

An accompanying change is the designation of the Pinellas County Schools Police and the school resource officers as "school officials" with a "legitimate educational interest" in student records. This designation will be included in the district's annual notification of designation of school officials. This change in practice acknowledges law enforcement officers' current role in investigating disciplinary matters and their ongoing, daily access to personally identifiable student information as an integral part of the performance of their duties.

Please call the Legal Department or the Pinellas County Schools Police for further information or clarification. ■