

# Legally Speaking

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*"Pessimism leads to weakness, optimism to power."*

*William James, 1842-1910*



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## Reporting of Absences by All Employees

By David A. Koperski, Assistant School Board Attorney

Each year, audits of attendance and payroll records show that some employee absences were not reported. Florida law and School Board policy require that every absence from work by a PCS employee, whether taken for sick leave, vacation, personal leave or other reason, be reported and properly documented, usually on an Employee Certificate of Absence form (PCS Form 3-135). As a publicly funded employer, the district must be able to show that it is not overpaying its employees for time that should not be paid or tolerating abuses of leave, such as by not requiring reports of absences that could allow employees to obtain more paid leave than they are entitled to. On Aug. 3, 2005, Superintendent Wilcox issued a memorandum to all employees reminding us that, while the use of employee sign-in and sign-out sheets as a method of recording attendance was optional and a building-based decision, accuracy in attendance records was a strict requirement at all work-sites.

Florida law requires that all public school administrators prepare and submit to their supervisor a report of their employees' absences, and the reasons for them. In our district, the School Board has adopted **Board Policy 8.16, Leaves**, that discusses sick and other leaves. Under that policy, each full-time employee who is unable to perform his/her job duties because of illness or

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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.

## The Problem With Airsoft Guns

By Laurie A. Dart, Staff Attorney

As the popularity of Airsoft guns has increased so has their presence on school grounds. Airsoft guns shoot plastic pellets by either a spring, electric or compressed air mechanism. While they may not be capable of inflicting lethal injury, a pellet in the eye certainly could lead to serious injury, and a shot to the bare flesh can be quite painful. However, the biggest risk posed by Airsoft guns on campus is to the student who holds one in plain view. The School Resource Officer who sees it may view that Airsoft gun as a loaded weapon, and the student holding it has put

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# Employee Responsibility for Lost or Stolen Equipment

By James Robinson, School Board Attorney  
and Pat Riggs, Director of Auditing and Property Records

Employees who remove equipment from any district location for job-related purposes must do so with the permission of the site administrator and are responsible for completing the most recent Property Removal Contract (PCS Form 3-1943), which is available on the District's website. Please refer to [School Board Policies 7.19 \(1\) and 7.21 \(8\)](#).

Use of School Board equipment, such as a computer or projector, comes with the responsibility to take reasonable steps to protect the equipment against loss or theft, failing which the employee may be responsible to make restitution to the District. Please keep the following points in mind when using equipment:

- ... Be sure to complete the contract in full including the job purpose on line 5.
- ... Promptly return the equipment by the scheduled return date.
- ... Complete an updated contract at least once annually.
- ... If there is justification for you to have equipment over the summer months, a contract specifically covering the summer months must be completed and approved by the site administrator before the end of the school year.
- ... By signing the contract, you agree that use of the equipment is for business purposes only, not for personal use.
- ... You accept responsibility for the equipment and agree to reimburse the School District for any damages incurred by misuse, negligence, carelessness or failure to follow required procedures, including

You accept responsibility for the equipment and agree to reimburse the School District for any damages incurred by misuse, negligence, carelessness or failure to follow required procedures ...

failure to take reasonable precautions to protect school equipment in your sole care, custody and control.

An example of negligence in the handling of equipment would be for an employee to leave a laptop computer on the seat of his or her car in plain view, even if the car is locked. To do so is to invite someone to break the window and steal the laptop. A reasonable precaution would be to lock the laptop in the trunk of the car or to take it with you.

In the unfortunate event that equipment is lost, stolen or damaged while in your care, be sure to do the following:

- ... If the loss is more than \$500, submit a completed Damage and/or Loss of Business Property Report (PCS Form 3-865) to Risk Management within 60 days of the occurrence. Make sure you fill it out completely, and have your site administrator sign the form.
- ... If a crime has been committed, the school or department is responsible for obtaining a copy of the police report and forwarding it to Risk Management.
- ... Include a copy of the A04 TERMS screen and/or a copy of the original purchase order.
- ... Provide a replacement cost



for each item. The acceptable sources for replacement costs are quotes directly from the Purchasing Department or an approved vendor.

Risk Management will review the damage and loss claim. If the employee and the school have taken reasonable precautions to protect the equipment assigned and followed the required guidelines listed in Risk Management's [Business Property Damage and Loss Self-Insurance Program](#) guide, the district may reimburse the replacement cost to the cost center, and the employee will not be personally liable for restitution. The guide is available at the Risk Management web page.

For equipment maintained on School Board property that is assigned to individual employees, reasonable precautions must be taken to protect the equipment from damage and theft, and the equipment is to be used for school business purposes only.

If you are a teacher and have equipment assigned to you that is in your classroom, it is your responsibility to report missing equipment as soon as possible. The earlier the report is made, better the chances are that the equipment can be located. ■

## How to Handle the Absent Parent

By James A. Robinson, School Board Attorney  
and Laurie A. Dart, Staff Attorney

Schools frequently get calls from out-of-town "absent parents." Those parents, who, for reasons unknown to us, do not have an active role in their child's life and often contact the school for information. Absent parents, once properly identified, have the same rights to student information as custodial parents. Unless a parent has had his or her right to have access to a child's student records under the Family Educational Rights and Privacy Act (FERPA) terminated by a court order, we should assume that the noncustodial parent's rights are intact.

How should we handle requests for information from an "absent parent?" When a person calls claiming to be a parent of a student at your school and requests to review or obtain copies of his or her child's educational records, the person's identity first must be confirmed. The voice on the phone could be anybody. Should the caller identify himself or herself as the stepparent of the student, you should ask him or her to have the biological parent or guardian contact the school directly as information only can be released to stepparents under certain situations as provided under FERPA. This also minimizes the number of

When a person calls claiming to be a parent of a student at your school and requests to review or obtain copies of his or her child's educational records, their identity must first be confirmed.

people making requests pertaining to the same student.

If the "parent" is local, you should ask him or her to come to your school and make the request in person. This would allow you to confirm the individual's identity by checking his or her driver's license and subsequently confirming that the individual is listed as the parent on the student's birth certificate or other documentation on file. If a birth certificate is not on file, the individual must provide you with a copy of such document. No information on a student should be released without first verifying the person's identity as the parent.

If the caller lives out of town, you may refer him or her to the Legal Department at 588-6219 or 588-6221. We will explain the process and coordinate obtaining an affidavit from the individual, confirming his or her identity and his or her relationship to the student. Upon receipt of the original affidavit, we will forward a copy to



your school, allowing you to release the information to the noncustodial parent to the address noted in the affidavit. A charge of \$.15 per page may be charged for copies requested. Ordinarily, the parent will be asked to provide self-addressed, stamped envelopes with the signed affidavit for use by the school. The parent will be informed that the school has 30 days to provide the requested information pursuant to Section 1002.22(3)(a)4, Florida Statutes.

Before releasing information to the requesting parent, the custodial parent is to be contacted and informed of the request. The custodial parent cannot stop the release of records to the requesting parent unless he or she produces a court order specifically terminating the requesting parent's rights under FERPA. If the custodial parent fears that harm will come if the address and telephone number are disclosed, that information can be redacted before releasing the records. ■

## Raffles and Games of Chance

By David A. Koperski, Assistant School Board Attorney

As a reminder, under the financial rules of the Florida Department of Education (DOE), fundraising activities conducted in the name of the school and for school connected activities cannot include games of chance, such as a raffle. DOE's Office of Funding and Financial Reporting publishes a written guidance regarding budgeting and financial reporting, commonly known as the

Redbook. The Redbook clearly prohibits this practice and also notes that fundraising activities for which students are charged an admission fee cannot be held during school hours.

However, a Florida law not applicable to the district allows not-for-profit organizations to conduct raffles and other "drawings of chance" if certain steps are taken. For example, all brochures, advertisements, tickets or

entry blanks used in connection with the drawing must contain the name of the organization hosting it, the rules of the drawing, and a statement that no purchase or contribution is necessary to participate in the drawing. In cases in which a fundraiser is not conducted in the name of the school or for school-connected activities, an outside not-for-profit organization may host a raffle or other drawings of chance. ■

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**Reporting of Absences**

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due to an illness or death of their father, mother, brother, sister, spouse, child or other close relative or member of the employee's own household and consequently has to be absent from work, shall be granted a leave of absence for sickness by the superintendent or his designee. An employee taking such leave must notify the appropriate supervisor and file an Employee Certificate of Absence before beginning the leave, if possible. In an emergency, the Employee Certificate of Absence may be filed immediately following return to duty. **Policy 8.16** also discusses military leaves, personal leaves and Family and Medical Leave Act leaves, all of which require reports of absences in some form. **Policy 8.11, Vacations**, outlines the PCS vacation rules and procedures.

Employees who do not report their absences are subject to discipline as engaging in fraud in violation of state law and Board policy. **Board Policy 7.34, Anti-Fraud**, defines "fraud" as, among other things, falsifying or unauthorized altering of district documents, including absences documents such as an Employee Certificate of Absence form. Fraud, under this policy, also encompasses failure to report an absence.

Many employees also qualify, occasionally, for Temporary Duty Elsewhere (TDE). TDE is not a leave but rather approval to perform work-related or other required duties, somewhere other than your usual worksite. Time spent under a TDE does not affect your pay or other benefits or diminish your sick, vacation or personal leave balances. A separate PCS form 3-650 exists to request a TDE. ■

**Airsoft Guns**

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himself or herself in the position of appearing like a person with a real gun – this is especially true when, as is often the case, the student paints the orange barrel end of an Airsoft gun black.

An inordinate number of student discipline cases that come before the School Board involve Airsoft guns. Airsoft guns, like BB guns and pellet guns, are not true "firearms" or "weapons" as defined in Chapter 790, Florida Statutes. Consequently, possession of an Airsoft gun, BB gun or pellet gun on campus is not a Zero Tolerance offense within the meaning of Sec. 1006.13, Florida Statutes, and, therefore, expulsion is not mandated by statute. However, each of these devices constitutes a "gun" as that term is used in the **"Code of Student Conduct" (Board Policy 4.01(8))**, and expulsion is mandated by policy for possession or use of such a device on school grounds, although the policy does not dictate the length of the expulsion period.

With respect to firearms and weapons as defined in Chapter 790, while possession is a Zero Tolerance offense, Sec. 1006.13(2)(b) provides that, *"District school superintendents may consider the 1-year expulsion requirement on a case-by-case basis and request the district school board to modify the requirement by assigning the student to a disciplinary program or second chance school if the request for modification is in writing and it is determined to be in the best interest of the student and the school system."*

Thus, even in the case of a Zero Tolerance offense under statute, expulsion is not mandated if reassignment "is determined to be in the best interest of the student and the school system." For that reason, Board policy is more strict than state statute when it comes to possession and use of weapons on school grounds because, unlike the statute, Board policy does not provide for consideration and modification of the expulsion requirement on a case-by-case basis.

Currently, the Code of Student Conduct Revision Committee is reviewing changes to the language regarding Airsoft guns, BB guns and similar objects that do not fall within the definition of a true "weapon" or "firearm" under state law. This committee is made up of school-based personnel, district-based administrators, parents, students and members of the community. Its recommendations are being made to the superintendent, who is taking them to the School Board for discussion and possible action. Any changes to the "Code of Student Conduct" must be made by the School Board. If and when any changes are made, you will be advised by the administration at your school, and they will be highlighted in this newsletter as well. ■

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

