

Legally Speaking

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Reporting Arrests

By Laurie Dart, Staff Attorney
Jim Lott, Administrator, Office of Professional Standards
Dr. Valerie Brimm, Administrator, Office of Professional Standards

If you are an employee of Pinellas County Schools and you are arrested or given a "notice to appear" for a criminal offense, **School Board Policy 8.04** requires that you immediately notify your supervisor. If you are a supervisor, the policy requires that you immediately notify the Office of Professional Standards (OPS) of the arrest. Understandably, telling your supervisor that you have been arrested is not a pleasant situation for anyone, but, nevertheless, it is a requirement for everyone under school board policy. Instructional employees should note that school board policy is broader than the rules governing the conduct of teachers. For example, the Principals of Professional Conduct require that you report an arrest only if it involves the abuse of a child or the sale and/or possession of a controlled substance. However, if you are convicted or there is otherwise a finding of guilt, withholding of adjudication, commitment to a pretrial diversion program or the entry of a plea of nolo contendere for any criminal offense other than a minor traffic violation, you must report the disposition within 48 hours.

The self-reporting requirement is not something that is new (See, *Legally Speaking*, Volume II, Issue 3, Spring 2002). What is new is that the school board is in the process of fingerprinting and conducting Level II background checks on existing employees because it is required to do so under state law. In connection with that process, it has come to the attention of the administration that many employees have not reported criminal arrests. The superintendent recently sent a memorandum via e-mail reminding all employees of their self-reporting

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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.

Anti-bullying Policy in Development

By James A. Robinson, School Board Attorney

On June 10, 2008, Governor Crist signed the Jeffrey Johnston Stand Up For All Students Act (Act). Called "Jeff's Law," the Act was named after a 15-year-old Cape Coral student who killed himself after enduring more than two years of cyberbullying by a classmate. The Act calls for the adoption of policies by Dec. 1, 2008, defining and prohibiting bullying and harassment in public schools by students and staff. While the board has existing policies that prohibit bullying and harassment (**Policy**

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Off-Campus Student Misconduct Via the Internet

By James A. Robinson, School Board Attorney
David Koperski, Assistant School Board Attorney

For years, school administrators have debated whether to discipline students for acts of misconduct that occur off of school grounds, such as fights at a movie theater on a Sunday or a possession of alcohol in a park on a Saturday. With more and more students maintaining MySpace and Facebook pages, as well as general blogging on various sites, administrators now face a similar decision but in a much different setting that can be viewed not by dozens of people but by millions. This article discusses when off-campus student misconduct can be disciplined and reviews some recent cases involving student misconduct for off-campus statements made on the internet.

Generally, schools can discipline students for off-campus misconduct, including when done on the internet, where the misconduct is, or could reasonably be expected to be, substantially disruptive of the school setting. Whether these conditions are met will depend heavily upon the facts of each case. While our **"Code of Student Conduct"** at page 14 discusses disciplining off-campus misconduct that leads to a felony charge and a new law discussed below allows us to discipline cyber-bullying, both of these situations still likely require a substantially disruptive impact on the school setting before school discipline can be handed down.

The primary legal issue is that of students' First Amendment free speech rights. On one side, schools have the right to maintain an environment conducive to learning. On the other side, students, like all other citizens, have a right to engage in protected speech, including unpopular speech. In 1969, the U.S. Supreme Court ruled in *Tinker v. Des Moines Indpt. Schl. Dist.* that students possess constitutional rights, including free

speech, at school. Most internet student speech issues, however, involve speech that is made off campus. If the student engages in inappropriate internet speech on campus using the school computers or the school network, then the student can be disciplined if it violates the district's **Internet/Network Acceptable Use Agreement (see Policy 7.30)** even if there is no disruption to the school environment.

Generally, schools can discipline students for off-campus misconduct, including when done on the internet, where the misconduct is, or could reasonably be expected to be, substantially disruptive of the school setting.

A new Florida law, known as the Jeffrey Johnston Stand Up For All Students Act of 2008, addresses cyber-bullying. This new law prohibits all bullying and harassment, including cyberbullying, and requires school boards to adopt policies that speak to the duties and responsibilities of schools when students or staff members report bullying or harassment. Our board policies already prohibit bullying and harassment, but our school board soon will be considering policy revisions providing the exact information required by the new law.

The following is a brief summary of recent court ruling from around the country involving students challenging their school discipline because the statements were made on the internet from an off-campus location. These cases illustrate how fact-intensive the rulings are and the varying degrees of disruption that various courts will accept as justifying the discipline.

- A high school student posted

a vulgar and misleading comment about a school administrator on a non-school public website in response to the administrator's cancellation of a popular school event. As punishment, the school precluded the student from running for or being seated as senior class president (not unexpectedly, the student still received the most votes as a write-in candidate). The court ruled in favor of the school, stating that the discipline was valid because the evidence showed that the student's posting posed a foreseeable risk of substantial disruption. The court looked at three factors to determine whether the actions created a risk of substantial disruption. First, the court noted the derogatory and offensive language the student had used, recognizing that the language was not in line with any effort to cooperatively resolve the issue. Second, the court noted the misleading, if not false, nature of the information posted. Importantly, the misinformation caused tensions to increase over the event postponement with some students threatening a sit-in. Third, the court noted that "participation in extracurricular activities is a 'privilege' that can be rescinded when students fail to comply with the obligations inherent in the activities themselves."

- A high school student created a MySpace profile in the name of his principal, providing answers to background questions that he thought would be humorous. The answers ranged from nonsensical to vulgar and juvenile, including some drug, alcohol and sexual references. The website was created off school grounds, but the student, as well as others, had accessed the profile on school computers. Teachers reported students congregating around computers and giggling when viewing the site. The student was suspended for 10 days for creating the

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Presence of School Officials at Child Protective Investigation Interviews at School

By James A. Robinson, School Board Attorney

School site administrators frequently are faced with requests from Department of Children and Family Services (DCF) officials or agents to interview students at school in connection with child protective investigations conducted pursuant to Section 39.301, et seq., F.S. We recently received a call from the Pinellas County Sheriff's Office advising that a school principal had insisted on being present with the student during such an interview.

The statute gives the DCF investigator the discretion to decide whether a school employee may be present during the interview on three conditions: 1) the staff member is known by the child; 2) the investigator believes the staff member's presence could enhance the success of the interview; and 3) the child requests or consents to the presence of the staff member at the interview. Section 39.301(18), F.S. If these conditions are met, the employee's presence is allowed, but the employee's presence is within the discretion of

the investigator, not the employee.

School personnel are required to cooperate and assist DCF in connection with child protective investigations. Section 39.0014, F.S. If you have any questions regarding interviews of students, please call your regional superintendent or legal at 588-6219.

More in-depth guidance concerning law enforcement interviews of students on campus will be forthcoming in the near future. ■

It's Election Time

By James A. Robinson, School Board Attorney

We recently have received questions asking whether it is permissible for employees to wear campaign buttons at work to show support for their candidate.

With election time rapidly approaching, this is a good question to ask. Wearing a campaign button or T-shirt at work supporting a particular candidate or political position long has been interpreted to be "engaging in political activities" by employees and

a violation of board policy.

School Board Policy 8.07 (3)(b), Political Activities, provides that "Employees are prohibited from engaging in political activities on school board premises during duty hours." The prohibition applies to any political activity. For example, an employee who is a candidate for political office should not introduce him/herself to others in the workplace as a candidate for office. Also,

employees should not use the e-mail system or bulletin boards to solicit support or opposition for a candidate or political cause. (E-mail use for such purpose would be a violation of **Policy 7.33, Use of Electronic Resources**, as well as **Policy 8.07, Political Activities**.) ■

Standing for the Pledge — Court Update

By David Koperski, Assistant School Board Attorney

Almost two years ago, we wrote about a federal trial court ruling confirming that students have a right to refuse to stand when the Pledge of Allegiance is recited in school. This right is grounded in the First Amendment Free Speech Clause, which has been consistently interpreted to include the "right not to speak." This case was appealed, and the appellate court recently ruled the same way but declined to invalidate the

entire Florida statute as unconstitutional. See *Frazier v. Winn*, 2008 U.S.App. LEXIS 15546 (11th Cir. 2008).

This new ruling further confirms our policy and practice of allowing a student to remain seated and silent during the Pledge of Allegiance. **School Board Policy 6.13(3)** recognizes this right so long as the student "maintain(s) a respectful silence, refraining from any act that would interfere



with . . ." the pledge. So, as long as students are not disruptive, they may stand and recite the pledge or stand or sit in silence. The First Amendment protects both forms of expression. ■

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Reporting Arrests
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You never should wait to report the arrest until after you find out what happens because even if you are acquitted, your obligation is to report the arrest.

obligation under board policy and notifying everyone that the district will enforce the reporting obligation from this point forward. You never should wait to report the arrest until after you find out what happens because even if you are acquitted, your obligation is to report the arrest.

After you report an arrest, there may be disciplinary consequences under **School Board Policy 8.25** depending on the nature of the criminal offense as well as the disposition of the matter for which you were arrested or given a notice to appear. There may be no consequences if the matter is not prosecuted or if you are acquitted. The Office of Professional Standards can advise you as to the likely consequences if you are convicted (or there is otherwise a finding of guilt including withholding of adjudication, commitment to a pretrial diversion program or the entry of a plea of nolo contendere), and this information may help guide you in any plea negotiation. ■

Off-Campus Student Misconduct via the Internet
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profile. No other students were punished. The court ruled in favor of the student, stating that the school had not shown a sufficient connection between the student's speech and a substantial disruption of the school environment. The court noted the lack of class cancellations and the short period of time before the profile was removed from MySpace. The court compared the student reactions caused by the profile to "the far more boisterous and hostile environment" sparked by the children in Tinker (black armband case), which was also not a substantial disruption.

- An 8th grade student created on a home computer a website called "Teacher Sux" that used words and graphics to make derogatory, profane, offensive and threatening comments about the student's principal and teachers. The student also accessed the site at school and showed it to other students. The school suspended and expelled the student. The court ruled in favor of the school, stating that the website statements were on-campus speech because of the student's on-campus actions of accessing the website, showing other students the website, and telling other students about the website. The court also noted "that where speech that is aimed at a specific school and/or its personnel is brought onto the school campus or accessed at school by its originator, the speech will be considered on-campus speech." The court did not analyze the "substantial disruption" test because the speech was deemed to be on-campus. ■

Anti-bullying Policy in Development
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4.01(7), Code of Student Conduct; Policy 8.24, Guidelines to Prevent Sexual Harassment; and Policy 8.241, Prohibition of Harassment, the Act requires specific provisions not contained in current policy.

The board is developing an anti-bullying policy and is receiving input from students, parents, teachers, administrators, the school staff, school volunteers, community representatives, local law enforcement agencies and the public. The board plans to hold a public hearing and adopt a final version of the policy Nov. 11, 2008. ■

**CHAPTER 2008-123
House Bill No. 669**

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 1006.147, Florida Statutes, is created to read:

1006.147 Bullying and harassment prohibited.—

(1) This section may be cited as the "Jeffrey Johnston Stand Up for All Students Act."

(2) Bullying or harassment of any student or employee of a public K-12 Educational institution is prohibited ...

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

