

Legally Speaking

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Amendments to the Americans with Disabilities Act

By James A. Robinson, School Board Attorney

Significant amendments to the Americans with Disabilities Act (ADA) and the Rehabilitation Act (Section 504) will take effect Jan. 1, 2009. The first notable expansion to these laws is the addition of some 10 major life activities to the existing regulations. As of the effective date, the following activities will be considered major life activities in addition to caring for oneself, performing manual tasks, seeing, hearing, walking, speaking, breathing and learning: *eating, sleeping, standing, lifting, bending, reading, concentrating, thinking, communicating* and the *operation of a major bodily function*. The phrase "substantially limits" takes on a new meaning. Congress rejected the U.S. Supreme Court's interpretation that the impairment must "severely restrict" (and the Equal Employment Opportunity Commission's regulation that the impairment must "significantly restrict") a major life activity as being too restrictive. Schools should continue to use the phrase "substantially restricts." Remember that the analysis remains in comparison to the "average person" in the general population.

A second major change is the prohibition against considering the effects of "mitigating measures" when determining whether an impairment substantially limits a major life activity. Thus, when an employer or a school 504 team is making the determination as to whether a physical or mental impairment substantially limits a major life

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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.

Board Policy Rewrite – Update

By David Koperski, Assistant School Board Attorney

As some of you may know, the school board and district staff are currently in the process of reviewing and revising the board's entire "Policy Manual." The current "Policy Manual" can be viewed online at www.pcsb.org/planning/toc1.html. Last school year, the board hired a policy consultant, NEOLA, to assist the district staff in reviewing and revising the policies. NEOLA has worked with other school districts in Florida and around the country to ensure that policies are clear, concise, consistent

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Amendments to ADA

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activity, the decision must be made without regard to the mitigating effects of such factors as medication, hearing aids, other technology, reasonable accommodations, “learned behavioral or adaptive neurological modifications” or other such interventions. There is an exception made with respect to ordinary eyeglasses or contact lenses.

Thus, a student with epilepsy who has been effectively medicated for a number of years would likely have to be considered as substantially limited in a major life activity. Likewise, an employee with a mental health condition whose symptoms have been successfully treated will likely have to be considered as substantially limited in a major life activity with the result that the employer would have to speculate as to what that condition would be like without these interventions. While a temporary illness or injury would not be deemed to substantially limit a major life activity and, therefore, give rise to civil right to a reasonable accommodation, an impairment “that is episodic or in remission is a disabil-



ity if it would substantially limit a major life activity when active.”

Congress has made it much easier for students and employees to claim that an entity has “regarded” them as having a disability. An individual only will need to show that the school believed he or she has an impairment and took some prohibited action based on that belief, even if the impairment does not substantially limit a major life activity.

Nevertheless, although the number of students and employees who qualify as “disabled” will be impacted, we do not necessarily believe that all such students will require 504 accommodation plans or that all employees will be entitled to reasonable accommodations. This is

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because Congress did not alter the requirement that reasonable accommodations must be “necessary” for the student to benefit from his/her educational program or, in the employment context, “necessary” for the employee to perform the essential functions of the job. Schools continue to have a “child find” duty under Section 504, and it remains to be seen what effect this unique requirement may pose for school districts.

For now, we will be looking to see what, if any, changes need to be made to board policies and procedures and any related forms to comport with these changes. Training will be necessary to ensure the school staff is familiar with the changes so that we are in compliance come January 1, 2009. ■

Holiday Displays

By David Koperski, Assistant School Board Attorney

Every year around this time, we receive numerous questions from schools and other district worksites regarding holiday displays, music programs and other recognition of the various religious holidays that occur near the end of the calendar year. In recent years, many highly publicized cases throughout the country have brought this issue to the forefront. These cases have involved a variety of facts, including schools displaying Christian-themed images and cities erecting nativity scenes in public parks.

The main legal issue is whether the

government’s (our) acknowledgment of the holidays violates the First Amendment’s prohibition against the “establishment of religion,” known as the Establishment Clause.

Regarding religious holidays specifically, 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 pro-

gram, 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, the public schools should avoid decorating with religious

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Interscholastic Extracurricular Activities

By Dot Clark, Coordinator, Partnership Schools and Child-care Programs,
and James A. Robinson, School Board Attorney

“We have a parent here in the school office who wants her child to participate on the football team. The child is home schooled. Can he register with us to play football, too?” Since Tim Tebow, the Florida Gator quarterback, won the Heisman Trophy and grabbed national attention not only for his athletic ability but also for his past school experience as a home school student, this question comes to the partnership school office almost daily. In 1996 the Florida Legislature passed the Craig Dickinson Act, Sec. 1006.15, F.S. (the Act), which requires public schools to allow home-educated student and charter school students to participate in extracurricular activities. So the quick answer to the question is, yes, the student can register. However, the Act imposes some requirements, which are outlined below.

The Act provides that home education, charter school and private school students are eligible to participate in interscholastic extracurricular student activities at the public school to which they would be assigned according to the district’s attendance area policies. A student must:

1. If a home education student, meet the requirements of the home education program pursuant to Sec. 1002.41, F.S., and, if a charter school student, meet the require-

ments of the charter school education program as determined by the charter school governing board;

2. During the period of participation at a school, demonstrate educational progress in all subjects taken in the home education program by a method of evaluation agreed upon by the parent and the school principal;

3. Meet the same residency requirements as other students in the school at which he or she participates;

4. Meet the same standards of acceptance, behavior and performance as required of other students in extracurricular activities; and

5. Register with the school his or her intent to participate in interscholastic extracurricular activities as a representative of the school before the beginning date of the season for the activity in which he or she wishes to participate.

A student who transfers from a home education program to a public school before or during the first grading period of the school year is academically eligible to participate in interscholastic extracurricular activities during the first grading period provided the student has a successful evaluation from the previous school year.

In the case of private school stu-

dents, the Act requires the Florida High School Athletic Association (FHSAA), in cooperation with the District School Boards of Bradford County, Duval County, and Nassau County, to facilitate a two-year pilot program during the 2008-2009 and 2009-2010 academic years in which a middle school or high school student who attends a private school shall be eligible to participate in an interscholastic or intrascholastic sport at a public high school, a public middle school or a 6-12 public school that is zoned for the physical address at which the student resides if:

1. The private school in which the student is enrolled is not a member of the FHSAA and does not offer an interscholastic or intrascholastic athletic program.

2. The private school student meets the guidelines for the conduct of the pilot program established by the FHSAA’s board of directors and the participating district school boards. At a minimum, such guidelines must provide a registration deadline, eligibility requirements and parental responsibility for transportation.

A report on the progress of the pilot program is due by Jan. 1, 2010. The private school pilot project provision of the Act will be automatically repealed on June 30, 2010, unless reviewed and re-enacted by the Legislature. ■

Bullying Policy Adopted

By Jan Urbanski, Ed.D., Supervisor Safe and Drug Free Schools

In response to a new state law, *The Jeffrey Johnson Stand Up for All Students Act*, the school board recently adopted a policy that prohibits bullying and harassment. The policy ensures that all students, em-

ployees and volunteers learn and work in an environment that is safe, secure and free from harassment and bullying of any kind. Florida is now one of 32 states with a law regarding bullying in schools and Pinellas County Schools is one of the

first districts to be implementing a board-approved policy.

The policy defines bullying as systematically and chronically inflicting physical hurt or psychological dis-

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Board Policy Rewrite—Update

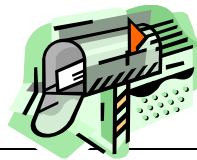
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and up to date.

The policy review process entails many steps. First, the draft new polices, which are broken down into various subject matter chapters such as “Students,” “Finances” and “Community Relations,” are reviewed by the appropriate district staff. The staff compares the draft new policies to our existing policies and then recommends any changes. The staff may elect to stay with our current policy, use the NEOLA policy or combine the two to achieve the best of both. The staff recommendations then are reviewed by the legal department to ensure legality. Next, the superintendent must give her approval to the new proposed policies as a whole. Lastly, the school board will conduct workshops to discuss the policies before ultimately voting on them at a regular school board meeting.

We anticipate the process will continue through this school year. Until the board revises its current policies, they remain in full force and effect and should be followed. If you have any questions regarding the policy rewrite process, please feel free to contact us or the policy and planning department. ■

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



Holiday Displays

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symbols. For example, a crucifix 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 routinely are treated by courts as secular symbols that are permitted in holiday displays, as are wreaths and garland.

All schools should enjoy the holidays and the anticipation of a much-earned rest. 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. ■

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

Bullying Policy Adopted

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tress on one or more students or employees and may involve but is not limited to teasing; social exclusion; threat; intimidation; stalking, including cyberstalking; physical violence; theft; sexual; religious; or racial harassment; public humiliation or destruction of property.

Harassment is defined as any threatening, insulting or dehumanizing gesture; use of data or computer software, or written, verbal or physical conduct directed against a student or employee that:

1. Places a student or employee in reasonable fear of harm to his or her person or damage to his or her property.
2. Has the effect of substantially interfering with a student's educational performance, opportunities or benefits.
3. Has the effect of substantially disrupting the orderly operation of a school.

Incidents of bullying can be reported to a principal/designee or a supervisor or reported online at http://www.pinellas.k12.fl.us/SDFS/bullying_report.html. Anonymous reports can also be made by calling the Campus Crime Stoppers Hotline at 1-800-873-8477.

For more information about the policy or the implementation plan, visit the safe and drug free schools' website at www.pcsb.org/sdfs/bully.html. ■