Pinellas County School Board Attorney's Office

Legally Speaking

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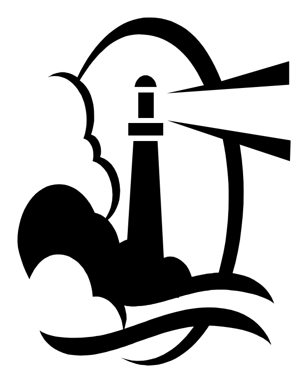
Confidentiality of Criminal History Reports

By David Koperski, Assistant School Board Attorney

Whenever a person applies for employment with the district or wants to work as a vendor in a school setting, that person must undergo a criminal background check known as a “level 2 screening.” The process is fairly straightforward – forms are filled out, fingerprints are taken and the information is sent to various state and federal agencies to see what, if any, criminal history exists for that person. The criminal history check is comprehensive and even includes “sealed” or “expunged” records that many believe would “disappear” forever (for more on sealed and expunged records, keep reading). Under Florida law, all public school district employees must be rescreened periodically, and the district is currently in the process of doing this.

After the state and federal agencies check a person’s background for any criminal activity, they either send the district a note stating no criminal history exists or, if the person has been arrested at least once, the agencies send a written criminal history report. This report will note all arrests, including ones that do not result in a conviction of or plea to the criminal charge. The reports often note criminal charges as being “dismissed,” which means that the prosecutor either did not pursue the case or tried and failed to convict the person. In either event, this type of criminal history should not be held against the person because he or she was not determined guilty.

(Continued on page 4)



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.

School-based Decision-making

By James Robinson, School Board Attorney

There has been much discussion about the concept of school-based decision-making. The Superintendent and school administrators have met to discuss the topic on a number of occasions. The Board recently considered a draft policy on the subject. Those of you who have not been part of the conversation may be wondering what school-based decision-making is all about. This article is intended as a summary of what is under consideration.

(Continued on page 3)

Inside this issue:

Communicating by E-mail and Use of Electronic Resources 2

Are My Personal E-mails Private? 3

The School Board of Pinellas County, Florida, prohibits any and all forms of discrimination and harassment based on race, color, sex, religion, national origin, marital status, age, sexual orientation or disability in any of its programs, services or activities.

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Communicating by E-mail and Use of Electronic Resources

By Laurie Dart, Staff Attorney

We use our computers and other electronic resources every day and probably do so without ever thinking about the School Board Policy governing the use of these items. This article is a reminder of the policy and some of the issues relating to the use of electronic resources.

While some companies and organizations do not allow employees to use electronic resources for any purpose other than performing the duties relating to their job, our School Board recognizes that there may be times when we need to use the equipment to communicate on a matter that is not job related. Policy 7.33 defines this "incidental personal use" as "use by an individual employee for occasional personal communications, in the same manner as an employee might reasonably use the district's telephone for occasional personal calls." In other words, we should use the electronic resources (for example, copiers, fax machines, computers and Internet access) only for job-related activities unless the personal use is "occasional" and similar in nature to a personal telephone call that an employee might make using a district telephone. While "occasional" by definition means that the use is infrequent and not on a regular basis, there is no bright line test to establish "occasional use" nor is there an explicit list of non business communications that are permitted under the policy. Rather, the policy provides sufficient flexibility to allow for a variety of circumstances and employs a common sense approach. Is it acceptable to reschedule a doctor's appointment, send an e-mail to your spouse to pick up milk or fax a form to your insurance company? Yes, it is acceptable as long as it does not result in a long distance charge (in the case of a phone call or fax), does not interfere with your job duties and is not done frequently.

If you ever are unsure as to whether it is appropriate to use district resources for a particular purpose, Policy 7.33, as well guidelines published in the district's "Communications Guide," provide examples of the following unacceptable uses:

- Any use that is illegal or in violation of other district policies.
- Harassing, defamatory, insulting, or profane language or pictures are not permitted nor are derogatory or inflammatory remarks.
- Any use involving materials, language or pictures that are obscene, pornographic, sexually explicit or sexually suggestive.
- Any inappropriate communications with students or minors.
- Any use for private commercial, advertising or business solicitation purposes.
- As a forum to solicit, advocate or communicate the personal, political or religious views of an individual or non-school-sponsored organization.
- Any use to raise funds for non-school-sponsored purpose, whether profit or not-for-profit, except as approved by the superintendent or designee.
- Any use to disseminate false information that impacts the credibility of the district.
- Any communication that represents personal, political or religious views as those of the district or that reasonably could be misinterpreted as such.
- Sending or forwarding mass e-mails or chain letters to district users or outside parties for district or non-district purposes without the permission of the principal or department administrator.

A common complaint about the use of the e-mail system comes from employees who receive unwanted e-mails usually because the original message was sent to everyone at a particular school or everyone in the district. If one of the original recipients replies to the message by hitting the "reply to all" button, large numbers of people become a party to the conversation and if there are numerous responses, it clogs up the e-mail system and annoys people. Remember to limit your communication to the intended audience. ■

Free Tax Preparation and Information on EITC

The Wealth Building Coalition of Pinellas County, an organization supported by JWB Children's Services Council of Pinellas County and *The Weekly Challenger*, has notified the district that it is reaching out to people who may be eligible for the Earned Income Tax Credit (EITC) but are not claiming it, providing free tax preparation for low and moderate income wage earners to ensure eligible working families and individuals know how and where to file. The EITC can be worth up to $4,824 for families who worked in 2008, and it may be that you are eligible but did not know it. To find out more information about the EITC and free tax preparation services, contact the Wealth Building Coalition of Pinellas County at 2-1-1 or the James B. Sanderlin Family Center at 727-321-9444. You can also visit the website at www.wbcpc.org. ■

Are My Personal E-mails Private?

By James A. Robinson, School Board Attorney

A companion article explains that personal use of district electronic resources, including computers, is acceptable, so long as it is incidental. The question arises as to whether employees have any right of privacy in personal e-mails or other communications they generate or receive with their district-issued desktop computer, laptop or cell phone? The answer is no, and the reason is that employees have no reasonable expectation of privacy in e-mails and documents produced or received on Board-owned or leased equipment.

Policy 7.33 provides in part that,

> "The district retains control, custody and supervision of all electronic resources owned or leased by it. All messages created, sent, or retrieved through electronic resources are the property of the district …. The district reserves the right to monitor all use of electronic resources by employees and other users. Employees have no expectation of privacy in their use of electronic resources."

Courts have found that employers' monitoring of their employees' electronic transmissions involving e-mail, the Internet and computer file usage on employer-owned equipment is not an invasion of privacy. Invasion of privacy claims against an employer generally require employees to demonstrate, among other things, that they had a "reasonable expectation of privacy" in their communications. Courts have consistently held, however, that privacy rights in such communications do not extend to employees using employer-owned computer systems, even in situations in which employees have password-protected accounts.

What is the reason behind the policy? Why would the district monitor your personal e-mails? There are legitimate reasons for the policy. These include the need to monitor the system to prevent or stop 1) the release of confidential and exempt information, 2) the spread of harmful computer viruses, 3) copyright infringement and 4) other misuse of district electronic resources. The district also has access to your mailbox just as a matter of routine maintenance.

Though no reason is legally required for random monitoring, it is not the district's practice to monitor just to be "nosey." Rather, the district monitors on a routine basis or as a result of a reasonable indication of a threat to the system or inappropriate use.

What happens if my personal e-mail is discovered through monitoring? Nothing, so long as the e-mail content does not violate Board policy or applicable law (see the companion article). Is my personal e-mail subject to a public records request? No. The Florida Supreme Court settled this question several years ago in a case involving the City of Clearwater. A personal e-mail is not a public record because it is not made or received in connection with the transaction of official business. The district would not disclose personal e-mails in response to a public records request.

What can I do to protect myself? Make sure you do not use district equipment for any purpose contrary to law or Board policy, and remember, what you say in an e-mail or text message is not private. ■

School-based Decision-making

(Continued from page 1)

School-based decision-making is a process of collaborate decision making at the school level involving school principals, teachers, parents and community members. It is based on three fundamental beliefs:

1. Those most closely affected by decisions ought to play a significant role in making those decisions;

2. The school is usually the most viable organizational unit within which to make changes; and

3. Changes have a greater chance of being effective and long-lasting when carried out by people who feel a sense of ownership and responsibility.

Under the proposed policy, the Superintendent would propose processes and procedures for Board approval for the implementation of school-based decision-making to include a delineation of which decisions would continue to be made at

> Along with the increased authority for making decisions would come increased accountability for improved student achievement.

(Continued on page 4)

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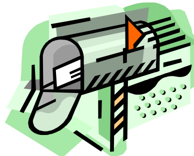

School-based Decision-making

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the district level and which would be delegated to the school level.

Subject matters appropriate for school-based decision-making might include development of educational priorities for the school and new programs to meet the unique needs of students, development of scheduling to meet instructional objectives and allocation of school resources to best meet the needs of students.

The procedures would provide for the development of individual school plans for implementation of school-based decision-making. The plans would be submitted to the Board for approval. Such plans would address the extent to which local-level decision-making is appropriate to the school site consistent with the Board's obligations under state and federal statutes, regulations, State Board rules, and other applicable law and policy.

Along with the increased authority for making decisions would come increased accountability for improved student achievement. ■

Confidentiality of Criminal History Reports

(Continued from page 1)

From time to time, we receive requests to view the criminal history reports we receive from state and federal agencies. These requests usually cite the Florida Public Records Act, which states that any record in our possession is open to the public unless the Legislature has provided an exemption for that type of record. Common examples of public records exemptions for public schools' records are student records, Social Security numbers and medical records. Even though no Florida law specifically exempts criminal history reports from public inspection, federal laws protect their confidentiality and, in this as in most cases, federal law trumps state law. Thus, we cannot and do not release criminal history reports to the public.

Not only are the criminal history reports themselves confidential and exempt from disclosure, but the district cannot even release the names of people who have been denied employment or vendor status based upon their criminal histories. To do this would essentially be telling the public that the person has a disqualifying criminal history, even if the exact offenses are not disclosed. In addition, neither can the district disclose to the public that a person's criminal history shows a "sealed" or "expunged" record. Many applicants for employment and employees have obtained court orders stating that their criminal history records must be "sealed" or "expunged." Nevertheless, that person's criminal history report will show the arrest and subsequent activity. However, the Florida attorney general has stated that employers cannot disclose that the person has a sealed or expunged record on his or her report.

The number of district employees who actually view criminal history reports is relatively small. They include certain employees who process employment and volunteer applications as well as others in the PCS Police Department and OPS. Those employees who actually view these reports must remain especially vigilant in protecting the reports' confidentiality and in preventing their wrongful disclosure to others, either inside or outside the district.

Because the wrongful release of these reports, either as a document or just a release of the information in them, violates the law and a School Board contract, the district could face a variety of penalties for wrongful release, including paying fines, settlements for breach of privacy and losing the ability to view certain criminal records. If the employee knowingly released the confidential information, that employee also could face civil and criminal penalties such as the payment of fines and judgments as well as, in egregious cases, imprisonment for up to one year. ■