**Meet the New General Counsel**

Sheryl G. Wood was appointed by the School Board as General Counsel effective July 1, 2011. She previously served as General Counsel to the South Florida Water Management District where she worked as an attorney for almost twenty-two years. Her areas of expertise include Ethics, Public Sector Law Office Management, Open Government, Employment, Procurement, and Financial Transactions. Ms. Wood is enjoying working with the Board and her staff experts in Education Law.

Attorney Wood also believes in community involvement and currently serves as a Take Stock in Children Mentor. She is active in the Palm Beach County Bar Association, Florida Bar Government Lawyer Section and the American Bar Association Government and Public Sector Lawyers Division.

She grew up in Palm Beach County and attended Palm Beach Gardens High School, Jupiter High School, Palm Beach Community College, and Florida Atlantic University where she received her BBA in Business, majoring in accounting. She graduated from Stetson University College of Law in 1988.

**Outline of Student Registration Policy**

According to Policy 5.011, Student Registration, we require parent(s) to produce only two types of documentation as proof of residence. The policy contains a list of items that are examples of proof. We list general types of proof but there is no requirement that any one type of verification is mandatory. A Registrar should never request proof of citizenship or immigration documents as this request would violate the Constitutional guarantee that there shall be no discrimination on the basis of national origin.

Please be aware however, under subsection 2 of the policy, there is a provision that authorizes a school principal to request additional proof of domicile, under certain circumstances. This will arise after a student has been registered and there has been some incident that caused the admini-

(See Registration, page 7)
Notice to School and Department Records Custodians

If your school or department has not yet designated a Public Records Custodian, promptly select a person and notify the Public Affairs Department of the custodian. Please note that there have been 3 mandatory Breeze training presentations to review concerning responding to public records requests, as per the March 20, 2009 Bulletin P-13100-CCSB/CAO/CPIO. These are located on the District’s Public Affairs Department web page. Click on Public Records, and then go to the link Public Records Procedures for all Public Records Custodians.

Preserving Public Records

You must know the types of public records maintained within your school/department, and be knowledgeable of the retention schedules for the applicable records series that are found within the District’s Records Retention Schedule. The schedule contains minimum retention periods that cannot be reduced. Note: this also includes e-mails.

You may use the search engine on the District’s website to locate the Retention Schedule, or go to: http://www.palmbeachschools.org/records/documents/RecordsRetentionScheduleAugust012010.pdf.

If you have any questions, please contact Records Management, within IT Applications, at 434-8029.

Mission Statement

The Office of General Counsel is committed to providing legal services and support to and for The School Board of Palm Beach County. It is our responsibility to protect the School Board and School District from liability in all legal matters. The Office of General Counsel benefits all departments, both academic and business, and enables staff to function appropriately on behalf of the student body, parents, and community of the School District.

From the General Counsel . . .

This newsletter provides you with timely, relevant articles that will apprise you of important, recent legal developments.

The General Counsel’s office is dedicated to providing you with high quality and timely legal services. We welcome your requests for legal assistance and encourage you to contact us. Serving the School Board, Superintendent, and school and District administrators in their work for the District, experienced attorneys will assist you in complying with federal and State statutes, rules, and regulations as well as School Board Policies.

We handle a wide range of issues, including general and special education law, including ESE and Section 504 issues, student discipline, student progression, and student records, employment and labor, rights and limitations under the U.S. and Florida Constitutions, contracts and business transactions, real estate and leasing questions, risk management, construction, administrative policy, interpretation of regulations and policies, ethics, open government and governance issues.

Sheryl G. Wood, Esq.
The following are some practical pointers when you are approached on behalf of an organization or entity that wishes to use facilities at your school.

Before you tell the prospective user that a lease is required, determine if the prospective user is entitled to use your facilities under a valid Interlocal Agreement (ILA). The School Board has an ILA with Palm Beach County that allows the County and named youth sports providers to use the recreational facilities at ALL schools in the District. A copy of the County Mutual Use ILA can be found at: http://cms.palmbeach.k12.fl.us/cms/pdf/ILA_Palm_Beach_County_Parks_and_Recreation.pdf.

If your school is located in an incorporated area, check to see if the prospective user is covered under a mutual use ILA with the municipality. Rosa Dawson in Planning and Real Estate Services is available to help determine whether there is a valid mutual use ILA with a particular municipality. She can be reached at PX 21946 (561-434-5807) or by e-mail at rosa.dawson@palmbeachschools.org.

- There may be an ILA or cooperative agreement that is specific to your school. This is often the case when your school is located adjacent to a municipal park. Copies of ILAs and cooperative agreements that are specific to a single school should be in the school’s files, however, if in doubt contact Rosa Dawson.

Remember, with the deployment of the Tririga system, all leases must be completed on-line. School Board Policy 7.18 Community Use of School Facilities, http://www.palmbeachschools.org/policies/ only authorizes principals or designees to sign the District pre-approved School Facilities Lease Agreement. If you are asked to approve any other form or a modified version of the pre-approved form, including forms regarding the use of your facilities as polling places or for filming by the Palm Beach County Film & Television Commission, immediately contact Planning and Real Estate Services as you are NOT authorized under Policy 7.18 to approve the use of your facilities for these uses.

- All fees charged must be in accordance with the District-wide rate schedule attached to Policy 7.18.
- The District’s portion of the facility fee cannot be waived, except in accordance with Categories B, D, E and F of the Matrix attached to Policy 7.18.

There are also a number of useful links and resources available on the Planning and Real Estate Services website at http://www.palmbeachschools.org/realestate/leasing.asp.

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**P-Card Training**

For all the schools with new Principals and Assistant Principals, don’t forget that P-Card training is available on Train-U. This is an important tool for reaching the goal of zero audit findings for your school.
REQUEST FOR STUDENT RECORDS BY NON-PARENT

**Question:** I am an elementary school principal who received a letter from an attorney requesting to see educational records of a couple of students at my school. May I release the records?

**Answer:** If you received the request only through a letter, email or verbally, the answer is **NO**. Even if the attorney represents the parents, or an eligible (adult and not a dependent) student, a proper consent form from the parent or eligible student is required. If the attorney does not represent the parent or a student whose records were requested (such as an attorney representing an opposing party in a lawsuit), the attorney would need a subpoena or court order to obtain the student’s records, absent a signed consent.

PUBLIC RECORDS REQUEST TO A SCHOOL CENTER

**Question:** At my school’s office we received a public records request for announcements to our Edline site relating to our school advisory council. I know it would take only a short period of time to find the few pages that are requested. Should I send this request to Public Affairs to process or what should I do?

**Answer:** Probably **NO**. Per School Board Policy 2.041 this would be considered a routine public records request that a school could handle without involving Public Affairs unless assistance is needed, such as questions regarding redacting of confidential or exempt information. The Policy defines routine requests as:

"... those that are directed directly to a particular department/school, the responsive records are readily available for inspection, and the documents contain no or minimal confidential or exempt information under the public records laws that would require redactions."

The policy further requires that the request be processed or routed immediately to the school’s/department’s records custodian. You are required to respond by immediately acknowledging that the request has been received and should respond within three (3) hours to provide a good faith estimate of the time it will take to respond. A prompt acknowledgement is required by law. Any requests for clarification must be sent to the requester. If you have any concerns, you may consult with Public Affairs for assistance. It is your responsibility to respond as quickly as possible as well as conducting a diligent search for responsive documents. It is also your responsibility to maintain documentation, such as a log of the request, the date of the response and the response, including documents provided, for use in the event an issue concerning the response arises later. Each records custodian **MUST** maintain a log of all public records requests received by his or her school or department. The policy in paragraph 16 sets forth the items to include within the log.

**This column is generally based upon questions that have been asked by District administrators to the General Counsel’s office. Not all are based on actual situations.** If you have any regulatory/policy questions that you believe may also be of interest to other administrators and you would like the issue be considered for a future edition, please contact Bruce Harris at PX 45882
**Legal Questions & Answers**

*Relating to Schools**, from preceding page.

If any of the responsive materials would be redacted or not provided based upon some exemption or confidentiality, the records custodian **MUST** provide to the requester a **citation of the particular statutory exemption** which is the basis of the withheld material. A list containing common [public records] exemptions can be found on the District’s web site. Again, if you have any specific questions, you should contact Public Affairs.

Unless exempt from public disclosure by law, District records, once located, retrieved, and redacted (if necessary), “shall be made available for inspection or copying” during school hours and this can occur at the school, District office, or "where the requester and the District agree."

If materials are readily available without exemptions, the response should be ready on the day they are requested or the next business day, if the request is received late in the day.

Note also, the policy and Florida law allow for certain charges, and these are stated within paragraphs 28 through 33. If "a deposit of estimated fees and charges is required pursuant to paragraph (33) ...[of the policy], the District will not proceed with the request until the District receives the amount requested for the deposit." The school must notify the requester of the anticipated charges and amount of deposit. If the special services charges will exceed $100 then approval of the fee must be obtained by the Chief Officer of Administration.

If there are any questions, please direct them to Willie Williams, the Public Information Coordinator within Public Affairs.

**MUST OUTSIDE ORGANIZATIONS BE GRANTED EQUAL ACCESS FOR STUDENT CLUBS?**

**Question:** An outside organization asked the school to allow a representative to conduct and sponsor a student club at the school after school hours. We have student initiated non-curricular related clubs that hold meetings on campus. Am I required to allow this outside group to conduct the club?

**Answer:** No, if your practice is uniform. The Equal Access Act applies to student initiated and conducted clubs, not those sponsored by outside groups. On June 14, 2011 the U.S. Department of Education issued guidance to the Equal Access Act and answers many frequently asked questions. This guidance can be located within the attachment at: [http://www2.ed.gov/policy/elsec/guid/secletter/110607.html](http://www2.ed.gov/policy/elsec/guid/secletter/110607.html). This guidance stated:

**Viewing Student Groups as Controlled or Directed by Nonschool Persons:** Schools may uniformly deny access to groups that are controlled, directed, or regularly attended by nonschool persons. ... But schools may not exclude certain student groups merely because of national affiliations, while providing access to other groups with similar affiliations.

**McKay Scholarship Notifications**

By April 1 of each year, and within ten (10) days after an Individualized Education Plan meeting, a School District shall notify the parent of a student with disabilities of all available options related to the McKay Scholarship Program. Section 1002.39(5)(a)1, Florida Statutes.
ALLOWABLE FEES CHARGED TO STUDENTS

Question: Why is my school not allowed to require students to pay for their field trips or lab fees, yet we can charge for lockers, parking spaces, extracurricular activities, and damage to district property?

Answer: Several years ago the District settled a lawsuit filed by some parents because a high school was allegedly imposing certain fees for field trips and labs as part of certain classes. As part of the settlement, the District adopted Policy 2.21 (School Requests for Payments from Students) to comply with the state constitutional provision to provide “free public schools”. The General Counsel’s Office prepared a training PowerPoint relating to this policy entitled “Training School Fees”. All teachers and school administrators need to be made aware of this policy.

Any questions not answered by Policy 2.21 concerning the appropriateness of a fee may be directed to the General Counsel’s office.

Do you have any questions about any of the articles you’ve read in this edition or have suggestions for topics for future editions of Legally Speaking? Please email Vicki Evans-Paré with your questions and/or suggestions at vicki.evans-pare@palmbeachschools.org.

SCHOOL SAFETY COMPLIANCE

This is a great time to plan and schedule the required drills:

- Fire Drills – 10 per year, including 2 within first 2 weeks of school.
- Tornado Drills – 2 per year, one must be in September. Second drill coordinated by school police in spring.
- Playground Inspections – monthly, task usually assigned to PE teacher or AP.
- Safety Committee Meetings – 5 per year, recommend September, November, January, March, and May.
- AED Maintenance – weekly, assign to staff person, must maintain log, recommend inspection each Monday.
- ESE Evacuation Plans – create individual plans for disabled students.
- Voluntary Student Accident Insurance – arrange to have brochure sent home with students.
- Workers’ Compensation Poster – display.

Failure to comply with district safety policies may be considered negligence and exposes the district to a lawsuit should someone get hurt.

See http://sdpbc.palmbeach.k12.fl.us/docs/district bulletins/p 13903 cfo rb.pdf

* Special Thanks to Mike Burke for providing this information.*
Legally Speaking . . .

(Registration, from page 1)
stratification to suspect the parent has given false registration information. The request must be based on “reasonable suspicion” (good cause) to believe that parent is not being truthful about the student’s place of domicile. One example of “good cause” cited is “the school has sent mail to the listed address and it has been returned.” It would appear based on that example that as to the enrolled student there would exist a “reasonable suspicion” that the student does not live at the given address. In such a case, the principal has the option to check the property appraiser’s office to verify the place of domicile, and the principal may also request additional verification of residence which includes one (1) proof of residence from each of three categories outlined in subsection 2 of the policy. In addition, the principal has discretion to accept other forms of residence verification as well, notwithstanding the categories outlined in the subsection.

Remember, the Office of the General Counsel is available to provide training for your staff.

Call our offices at 434-8500 (PX 48500) to arrange for personalized training.

McKinney-Vento Reminder

Iola T. Mosley, Esq.

Remember that Homeless students and students entering on their own are protected under the McKinney-Vento Homeless Education Act. A student’s status as homeless must not act to create a barrier to school registration. A student who is eligible under the act has a choice to enroll in his/her school of origin regardless of whether the student resides in the attendance zone of the school of origin. The school of origin is the last school the student attended prior to becoming eligible under McKinney-Vento. The student may also register at the school within the attendance zone where the student reportedly lives. McKinney eligible students are not required to present enrollment or immunization information prior to enrollment. Such students have up to 30 days to present the documentation otherwise needed for registration. These students should also be directed to the McKinney-Vento liaison for the area for additional assistance as needed. These students may not be kept out of school while a determination concerning their status is to be made. They are to be immediately enrolled.

An education isn’t how much you have committed to memory, or even how much you know. It’s being able to differentiate between what you know and what you don’t.

— Anatole France
LET’S GET READY FOR FOOTBALL SEASON:

APPLY FOR A DOH SANITATION CERTIFICATE

Kathelyn Jacques, Esq.

Football season is fast approaching; has your school applied for a Department of Health (DOH) Sanitation Certificate? If your school’s concession stand serves more than just prepackaged foods, then it requires a DOH Sanitation Certificate. Should you have more than one concession stand at your school, then you will need to fill out more than one application.

Applications for a DOH Sanitation Certificate were due December 1, 2010. If your school’s concession stand requires a DOH Sanitation Certificate and you have not applied then your concession stand is operating without a license and may be ordered to close down; therefore, you will need to immediately apply. Additionally, pursuant to Section 381.0072(3)(a), Florida Statutes, operating without a license is considered a second degree misdemeanor.

There is an annual Sanitation Certificate Fee that ranges between $85 and $190 depending on the kind of food your concession stand, and/or Culinary Arts Academy has to offer. It has been established that pursuant to Section 381.0072(4)(b), Florida Statutes that the aggregate fee per establishment shall not exceed $300.00.

Let’s get ready for football season, apply for your DOH Sanitation Certificate today!


Disciplining Students for Off-Campus Comments on Social Networking Sites

Bruce Harris, Esq.

Since June 13, 2011, two federal appellate courts have issued three significant opinions relating to the ability of a school to discipline a student for comments made off-campus on social networking sites. The Third Circuit in both its decisions ruled against the two Pennsylvania school districts as to their discipline of the students. The Fourth Circuit upheld a West Virginia school’s discipline of the student. A brief discussion of the significance of these cases, their facts, and of the court’s rulings is stated below.

The 3rd Circuit decisions conclude that a school cannot discipline a student for off-campus speech on a social networking site, unless the court determines that the speech caused a substantial disruption to the school or the school could reasonably forecast substantial disruption. In the 4th Circuit case, the court found a substantial disruption and therefore did not rule on whether the lewd statements on MySpace constituted in school speech which the school could regulate. A significant issue remains as to what constitutes a substantial disruption or a rea-
reasonable forecast of substantial disruption. In determining **whether there is substantial disruption** to a school as a result of student speech **on campus**, the 11th Circuit Court of Appeals (which governs Florida courts) has held that school officials “must have the flexibility to control the tenor and contours of student speech within school walls or on school property, even if such speech does not result in a reasonable fear of immediate disruption.” Nevertheless, student speech must at least “be likely to cause a ‘material and substantial’ disruption, ... and more than a brief, easily overlooked, *de minimis* impact, before it may be curtailed.” Furthermore, “student expression may unquestionably be regulated when doing so ‘contributes to the maintenance of order and decorum within the educational system.’” This can be a heavy burden.

Due to the split among the courts, it is recommended that a school not discipline a student for off-campus speech which does not occur at a school-related activity, unless the school determines that the speech caused a substantial disruption to the school or the school could reasonably forecast substantial disruption. If the school learns of this speech, however, it could and should take other actions such as notifying the parents.

In two cases, the students, outside the school day and off-campus, posted on MySpace from their home computers vulgar profiles concerning their school principals. They also posted a photograph of the principal that was obtained from the school districts’ websites. In both cases, the schools suspended the students.

In one of the cases, the school district did not argue that there was a connection between the student’s speech and a substantial disruption of the school. In the other case, although the school showed some disruption (“general rumblings, a few minutes of talking in class, and some officials rearranging their schedules”), the court found that the student’s speech did not cause a substantial disruption. The school did argue that based on the facts the school could reasonably forecast substantial disruption, but the court disagreed and stated that the profile was so outrageous it could not be taken seriously and the student had taken steps to keep the profile private.

Absent substantial disruption or a reasonable forecast of disruption, the court found violations of the First Amendment and that discipline of the student was not warranted.

The 4th Circuit, on the other hand, upheld the school’s five day suspension of a student for off-campus statements made on her MySpace webpage. The student had created a webpage that was used to ridicule another student at the school.

The court determined that the student had created a hate webpage that served as a platform for students to harass and direct verbal attacks against another student. This was the type of speech that caused substantial disruption and disorder to the school and, therefore, was not entitled to First Amendment protection. It was reasonably foreseeable that the student’s speech would reach the school and cause substantial disruption. Thus, the court concluded that the school was authorized to discipline the student because the speech interfered with the school’s operations and discipline.
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Do you have all your legally required employment posters?

Call your HR Relationship Manager if you have any questions.