

Re: Hillsborough County School District's Violation of Laws of Florida Chapter 93-4

Dear (Superintendent or Members of School Board),

I respectfully write this letter to you on behalf of Ms. Melissa Taylor, both as an attorney, and as the author of Florida Law 93-4; an act relating to breastfeeding. It is my understanding that Ms. Taylor's unqualified statutory right to breastfeed her child on school district property was and continues to be unlawfully infringed upon by school board officials. To date, I have had the opportunity to review several documents and media articles regarding this issue, including opinions emitted by the School Board's Attorney. Frankly, I fail to understand how such a clear pronouncement of law can be misunderstood either by your legal counsel, or by your personnel. Perhaps it may be helpful to provide you with specific background regarding the creation of this law for you to better understand that Ms. Taylor indeed has the right to breastfeed anywhere on school district property on which she or any other parent has a right to be.

In 1993, I had the privilege to serve the citizens of the State of Florida as a Member of the Florida House of Representatives. One day, while reading the newspaper, I came across a column piece written by Michelle Genz, a reporter for the Miami Herald. In this column piece, she explained how she was accosted by a security guard at a mall, while breastfeeding her child. This security officer informed her that it was not appropriate to nurture her child in that manner in public view, and even threatened to arrest her for indecent exposure. Ms. Genz ended her article by stating that if Florida legislators really cared about family values, they would protect this most basic right of a mother to nurture and provide sustenance for her child.

Ms. Genz' experience was what prompted me to draft Public Law 93-4, in order to make sure that no mother ever had to suffer the humiliation and indignities that she was put through.

a) Public Law 93-4 makes clear that breastfeeding in public is not unlawful or inappropriate.

I approached the drafting of the bill from two perspectives. First, I requested my bill drafting staff to review every Florida statute that could conceivably be utilized (rationally or not) to even threaten a woman nurturing her child with any sort of punitive consequence. Public Law 93-4 therefore includes a listing of Statutes dealing with unnatural and lascivious conduct, exposure of sexual organs, indecent assault or act upon or in the presence of a child, etc., and each said Statute was amended to include a simple sentence which states "a mother's breastfeeding of her baby does not under any circumstances violate this Section". Of course, the purpose of this exhaustive re-statement of all statutes that could possibly be utilized to threaten or harass a breastfeeding mother, was clearly intended to insure that there would be no question that a mother's nurturing of her child, in this most natural way, could not be interpreted to be unlawful, immoral or inappropriate.

b) Public Law 93-4 as codified in Florida Statute 383.015 creates an unconditional right to breastfeed in public.

The other part of Public Law 93-4 is pro-active. It includes several “Whereas” clauses which constituted the findings of the legislature in regard to breastfeeding. These “Whereas” clauses detail the fact that the Surgeon General of the United States recommends that women breastfeed their children. It discusses the health benefits of breast milk over packaged formula and the encouragement of breastfeeding by organizations such as the World Health Organization and UNICEF.

The “Whereas” clauses also discuss the sad fact that statistics continue to reveal a declining percentage of mothers who are choosing to breastfeed, in part because they are intimidated or “made to feel incriminated or socially ostracized for breastfeeding [their] baby”. Following these findings is a newly created section of the Florida Statutes, which was specifically enacted with the intent and purpose of preventing precisely the type of conduct employed against Ms. Taylor, which is not only ignorant, but has the effect of making Ms. Taylor feel “socially ostracized” for nurturing her child in public. Florida Statutes Section 383.015 states as follows:

The breastfeeding of a baby is an important and basic act of nurture **which must be encouraged in the interest of maternal and child health and family values. A mother may breastfeed her baby in any location public or private, where the mother is otherwise authorized to be, irrespective of whether the nipple of the mother’s breast is uncovered during or incidental to the breastfeeding.** (emphasis added)

With all due respect, how this clear, unconditional and unequivocal right that Ms. Taylor enjoys under Florida Statutes to breastfeed her child on School Board property can be misinterpreted or ignored is mind-boggling.

c) The process of legislative consideration and adoption of Public Law 93-4.

As you know, our Legislature is quite diverse. The Legislature I was privileged to serve in was comprised of individuals of different races, gender, ethnicity and political party. We had representation from conservatives, liberals, agricultural and rural interests, urban interests, etc. Yet all these diverse interests converged to support House Bill 231 which ultimately became Public Law 93-4.

Certainly, it cannot be said that legislators were not apprised of the intent, purpose and effect of this law. Indeed, during the Bill’s consideration in committee, there were several women in the audience breastfeeding their children in the presence of legislators as they considered the Bill. Among them was Rhea Mackinnon, the late Governor Lawton Chiles’ daughter, who was dutifully breastfeeding her son Mack.

The Bill was adopted by the Florida House of Representatives on February 18, 1993 by a vote of 107 yeas and 8 nays. It was adopted on March 4, 1993 by the Florida Senate with a similar overwhelming margin. It was the fourth Bill to be signed into law by the late Governor Chiles on March 9, 1993 in a much publicized ceremonial signing at the courtyard of the Capitol, as his

daughter Rhea stood by his side holding the Governor's grandchild.

d) The frivolous arguments utilized by school personnel to infringe on Ms. Taylor's rights under Florida Statute 383.015 are contrary to law, public policy and common sense.

In reviewing documents and media regarding this issue, I was frustrated to see that the same ludicrous and unsupportable arguments used against Ms. Genz, were now being employed against Ms. Taylor. For example, one of the arguments that I have reviewed states basically that Ms. Taylor's act of breastfeeding her child was somehow disruptive to other children on school property, "disruptive to the educational process" or could somehow harm the children exposed to this activity. This argument is completely devoid of any merit. Currently, under State law, Ms. Taylor can breastfeed at Disney World; she can breastfeed while quietly sitting at a bench in a public park where children play, or indeed, at a bus bench on a sidewalk adjacent to any school, in clear view of schoolchildren. Since the law allows her **—any indeed encourages her—**to breastfeed in all these places where children congregate, how can anyone conclude that this conduct can somehow adversely impact children within school property?

The frivolous arguments made regarding the rights of a Principal or Superintendent to regulate conduct in a school are equally unconvincing. It has been argued that the right to breastfeed "in any location public or private, where the mother is otherwise authorized to be", as provided in Florida Statute 383.015, does not undermine a school official's right and authority to determine who to grant or withhold authorization to be on public property. This is true. But the reason the breastfeeding law does not address this point is because, at the time of enactment of the law, there already was a legion of case law grounded on constitutional concepts such as Equal Protection and Due process. These cases stand for the proposition that regardless of the level of discretion that a public official may have to regulate access to a public place, such public official does not have a right to limit access to any individual on public property for an unlawful purpose or with an unlawful effect.

It has also been argued that despite the law's clear and unequivocal language, "if one were to read the statute as giving an unrestricted right to breastfeed, it would mean that a person in his or her own house could not ask a guest to perform the act in privacy". This argument is frankly absurd. First, when determining the intent of a particular provision of law, one usually looks to the debate and public pronouncements made during the bill's consideration. If your legal counsel would have conducted such analysis, he would have found that the issue before the legislature involved the right of a woman to breastfeed in public, not in someone else's home. Moreover, a public official's right to grant or deny access to public property is qualitatively different, both in law and in fact, to the right of an individual to grant or deny access to his or her home. Therefore, for example, if you are a racist, the Constitution allows you the right to discriminate against persons of another race or ethnicity in denying them access to your home. However, that same Constitution prohibits a public official from denying access to anyone onto public property based on race, ethnicity, gender and a myriad other characteristics. In this context, as it regards to public property, it is the reason for which access or authorization is determined that guides the analysis.

Because Ms. Taylor's conduct is totally lawful, and indeed encouraged by law, two things are undeniable: first, that Ms. Taylor has a right to be where any other law abiding parent is authorized to be on school property. Second, if parents are authorized to be at a certain location within school property, then Ms. Taylor has an unqualified right to breastfeed at that location and her access to that location on school property cannot be restricted because she engages in such lawful and protected activity on school property.

The references to federal law that I have reviewed are also misguided. Whether or not federal courts have held that the right to breastfeed in public may be qualified or restricted is irrelevant, because Ms. Taylor's unqualified right to breastfeed in public **in the state of Florida** flows from a **Florida statute**, not a federal constitutional or statutory provision. It is elementary and axiomatic that a state may grant greater protection to its citizens than those afforded by federal law or the federal constitution. The federal law analysis is only relevant to determine whether Ms. Taylor is being denied access to a public facility in a manner which violates her rights to Equal Protection of the law, or some other constitutional or federal statutory right she may have, which is separate and distinct from her rights under Florida statutes.

Simply stated, under the clear language of Florida law, Ms. Taylor has a right to breastfeed her child anywhere she is otherwise authorized to be. That means that if any parent is authorized to be at a given location on school property, then Ms. Taylor has a right to breastfeed at that location. To conclude otherwise eviscerates the clear intent, spirit, and letter of the law.

e) School personnel should use the act of breastfeeding as an opportunity to teach not as an opportunity to ostracize.

I respectfully submit that there are many things that school officials should take appropriate measures to insure that school children are not exposed to. These include drugs, weapons, as well as physical and mental abuse. But to classify the act of breastfeeding – the most natural act of nurture and sustenance – with these types of activities that children should not be exposed to, borders on the perverse.

Surely, young children may find such conduct curious, and even giggle or seem somewhat giddy or perplexed upon witnessing the act of breastfeeding. Sadly, this is because mothers in our country have been so discouraged from engaging in this most natural activity, that it is **unusual** for a child to be exposed to it. But I respectfully submit that instead of punishing the mother for the simple act of nurturing her child, any teacher or school official in proximity of those inquisitive children could use this as an opportunity to **teach**.

As we all know, children learn much from what they glean from adult reactions and conduct. If children -- and particularly little girls -- see that women are punished or ostracized for breastfeeding, the likelihood that they will engage in or promote breastfeeding when they become adults diminishes geometrically. Therefore instead of punishing or ostracizing the mother for breastfeeding her child, maybe Hillsborough school personnel should be teaching the children about the benefits of breastfeeding, and letting them know that what they may witness

when they see Ms. Taylor nurture her child, is **natural, normal, and healthy**. Maybe then, we could slow the sad percentage decline of breastfeeding in our society.

In closing, it is my sincere hope that the School Board and school officials will reconsider their misguided and unlawful responses to Ms. Taylor's act of nurturing her child, thereby obviating the need for Ms. Taylor to take legal action to enforce her unqualified right to breastfeed her child on any School Board property where she is otherwise authorized to be.

Respectfully submitted,

Miguel De Grandy

<http://hcsdbreastfeed.blogspot.com/2010/06/update-and-attorney-letter.html>