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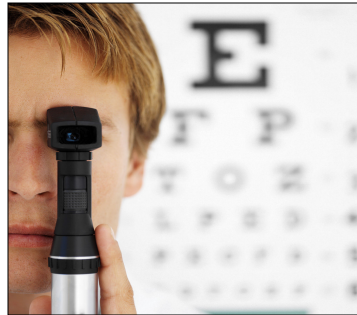
LEGISLATIVE UPDATE: VISION SCREENING AND DIABETES MANAGEMENT - by Andrea R. Kunkel

In its last two sessions, the Oklahoma Legislature enacted new laws imposing obligations on school districts with regard to obtaining vision screening results for certain elementary students and providing care for students with diabetes. This article will address those two laws. A chart containing a brief description of several other important legislative changes is also included in this issue.

Vision Screening (*Okla. Stat.* tit. 70, § 1210.274)

Beginning with the 2007-08 school year, the parent or guardian of each student enrolled in kindergarten is required to provide certification to school district personnel that the student passed a vision screening within the previous 12 months or during the school year. The law does not specify the exact time period during which the parent is to provide the certification. We suggest you provide the notice at enrollment and give a designated date

by which the parent is to provide the certification. If the parent does not provide the certification, then ask again at



“ . . . each student enrolled in kindergarten is required to provide certification that the student passed a vision screening within the previous 12 months or during the school year.”

other designated points during the school year, such as parent/teacher conferences.

Also beginning with the 2007-08 school year, the parent or guardian of each student enrolled in the first or third grade

is required to provide certification to district personnel that the student passed a vision screening within the previous 12 months. The parent is to provide the certification within 30 days of the beginning of the school year. If the parent does not provide the certification, request it again at designated points during the school year.

School districts cannot prohibit students from attending school because their parent/guardian fails to provide the certification.

The “vision screening” the law requires is different and distinct from a comprehensive eye exam. Parents/guardians must be informed of that fact. The law does not specify who provides that notice, but we suggest the school district do so.

The Health Department has established standards for the vision screenings and a registration process.
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EDUCATION AND THE ILLEGAL IMMIGRANT, PART ONE - by Jana R. Burk

The Oklahoma Taxpayer and Citizen Protection Act of 2007 (the “Oklahoma Immigration Bill”) which goes into effect on November 1, 2007, has created controversy and notoriety across the state. It has 14 sections which address several different immigration issues, including: employment eligibility verification; the knowing employment and transportation of illegal immigrants; public assis-

tance; identity theft; as well as state and local police authority to enforce federal immigration.

This article is part one of a two-part series that will address the Oklahoma Immigration Bill’s application to school districts by answering frequently asked questions with respect to the bill. In this article, we address the public schools’ obligation of educating

children regardless of their immigration status and the transportation of these students to and from school.

Are public schools required to educate children regardless of their immigration status?

Nothing in the Oklahoma immigration bill alters the unequivocal obligation of a public school to enroll

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try of screeners qualified to conduct them. Check the Oklahoma State Department of Health website – <http://www.health.state.ok.us> - for information.

If a student fails the required vision screening, then the qualified screener is supposed to provide the parent/guardian with a recommendation for the student to undergo a comprehensive eye examination performed by an ophthalmologist or optometrist. The ophthalmologist or optometrist is supposed to forward a written report of the results of the comprehensive eye exam to the student's school, the parent/guardian and primary health care provider. Again, though, school districts cannot prohibit students from attending school if the examiner fails to furnish it with the results of the comprehensive examination.



“... a personal health care team is to develop a written Diabetes Medical Management Plan for each student who will seek care for diabetes while at school.”

Each district must annually notify parents/guardians of students enrolling in kindergarten, first or third grade of the vision screening requirements.

Diabetes Management in Schools Act (*Okla. Stat. tit. 70, § 1210.196*)

Under this Act, a personal health care team is to develop a written Diabetes Medical Management Plan for each student who will seek care for diabetes while at school or while participating in a school activity. The Plan is to identify the health services the

student may need at school. The school nurse at the school in which the student is enrolled, if any, is to assist the student with management of diabetes care as provided in the Plan. If the school does not have an assigned school nurse, the principal must make a reasonable effort to find one or more district employees willing to serve as a volunteer diabetes care assistant to help the student with diabetes care as provided in the student's Plan. The principal must also make a reasonable effort to ensure that a school nurse or volunteer assistant is available at the school to help the student when needed. A school district cannot restrict the assignment of a student with diabetes to a particular school based on the presence of a school nurse or volunteer assistant.

The law requires that the school nurse or volunteer assistant have access to a physician at all times. We suggest that you ask the parent to provide written authorization for the nurse and assistant to contact the student's physician as needed.

Before undertaking responsibilities as a volunteer assistant, an employee must first complete training provided by the school nurse or the State Department of Health that includes:

- Recognizing the symptoms of hypoglycemia and hyperglycemia;
- Understanding the proper action to take if the student's blood glucose is outside the range indicated in the Plan;
- Understanding the details of the Plan;
- Performing finger sticks to check blood glucose levels,

check urine ketone levels and record the results of those checks;

- Properly administering insulin and glucagon and recording the results of the administration;
- Recognizing complications that require the Assistant to seek emergency assistance; and
- Understanding the recommended schedules and food intake for the student's meals and snacks, the effect of physical activity on blood glucose and the proper action to be taken if the student's schedule is disrupted.

To continue as a volunteer assistant, the employee must annually demonstrate competency in the above training. The district is to maintain a copy of the training guidelines and the records associated with the training.

With parent permission, the district is also to provide each employee responsible for supervising or transporting a student with diabetes a form with:

- The student's name;
- Telephone number of a contact person in case of an emergency involving the student; and
- Potential emergencies that may occur due to the diabetes and appropriate responses to such emergencies.

Any District employee provided such information must be informed of applicable health privacy policies.

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In accordance with his or her Plan, a student may attend to diabetes management at school or school activities, which may include:

- Performing blood glucose level checks;
- Administering insulin through the student's insulin delivery system;
- Treating hypoglycemia and hyperglycemia;
- Unless changed in accordance with this Policy, possessing on

his or her person at any time, any supplies or specialized equipment necessary to monitor and care for his or her diabetes; and

- Otherwise attending to the management of his or her diabetes in the classroom, any area of the school or grounds, or at any school related activity.

The school must provide a private area where the student can attend to his or her diabetes-related needs.

District employees acting in compliance with the law have certain protections from legal liability and from disciplinary action.

For information about how the Act impacts your responsibilities to students with diabetes-related needs on IEPs or Section 504 Plans, contact your school attorney.

EDUCATION AND THE ILLEGAL IMMIGRANT, PART ONE (CONTINUED FROM PAGE 1)

and educate children regardless of their immigration status. In *Plyler v. Doe*, 457 U.S. 202 (1982), the United States Supreme Court expressly ruled that access to primary and secondary education may not be denied on the basis of a child's immigration status. The court explained that denying these children a basic education violated the equal protection doctrine, which prohibits a state or federal government from denying equal protection of the laws to any "person"—a word that includes aliens and not just United States citizens. 457 U.S. at 215-16. The court based its opinion on the argument that denying children an education could create a permanent underclass of immigrants who would most likely remain in the United States, and since the children had no choice in entering the country, discriminating against them was unjust and not rationally based upon a substantial goal of the state. *Id.* at 222-26.

The holding in *Plyler v. Doe* means that—despite any language in the Oklahoma Immigration Bill—public schools may not deny admission to a student during initial enrollment or at any other time on the basis of a child or parents' undocumented status. Indeed, in light of the *Plyler* decision, it is our strong advice that school districts not inquire into the

citizenship or immigration status of students at all because those factors have no bearing as to their presence at school. Similarly, school districts must not treat students differently to verify residency, nor should they engage in any practices that obstruct these students' right of access to school.

Are public schools prohibited from transporting children to and from school?

Section 3 of the Oklahoma immigration bill makes it a felony for a person to "transport, move or attempt to transport...any alien knowing or in reckless disregard of the fact that the alien has come to, entered, or remained in the United States in violation of law, in furtherance of the illegal presence of the alien in the United States." The bill makes no exception with regard to the education context, however, key language in this prohibition is (1) that the person transporting the illegal alien must know or be in reckless disregard of the fact that the alien's presence in the country is unlawful, and (2) that the transport of the illegal alien is unlawful only when it is "in furtherance of the illegal presence of the alien in the United States."

As noted above, there is no reason that a public school employee

should inquire into the immigration status of the children attending public schools. As such, it is unlikely that a bus driver or any other school personnel would know with certainty that a child is in the country illegally. Moreover, considering the federal requirement that schools educate students regardless of their immigration status, failing to inquire as to the immigration status of students entering a school bus would not constitute "reckless disregard" of any illegal alien's immigration status. Instead, the school is simply conforming to the U.S. Supreme Court decision in *Plyler*.

Further, even if the individual transporting students happens to know that a particular child is an illegal immigrant, the only unlawful transportation of the illegal alien is that which is "in furtherance of the illegal presence of the alien in the United States." Again, considering the *Plyler* decision that all children, even illegal aliens, must have equal access to education, the transportation of the student by the school is



“... public schools may not deny admission to a student during initial enrollment or at any other time on the basis of a child or parents' undocumented status.”

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RF&R SPEAKERS/EVENTS SHOWCASE

Andrea R. Kunkel will be speaking at the Oklahoma Directors of Special Services winter conference on the afternoon of Thursday, December 6, 2007. The conference will be held at the Holiday Inn Oklahoma City Airport. Andrea will also be speaking at the Oklahoma Federation of the Council on Exceptional Children conference on the afternoon of Wednesday, February 6, 2008. The conference will be held at the Reed Center in Midwest City.

Karen L. Long and **Andrea R. Kunkel** have been selected by their peers for inclusion in the 2007 edition of Oklahoma Super Lawyers. Karen was chosen for this honor in the area of Employment and Labor for the second year in a row, while Andrea was selected for the first time in the area of Schools and Education. Karen was also named one of the Top 25 female attorneys in the state.

Catherine M. Bashaw has been selected as a member of Leadership Tulsa's latest class. Members are selected through a competitive process and will participate in a nine-month program that will involve all sectors of city leadership. The new class members will focus on the issues facing the community and ways to address those issues.

Articles authored by two Rosenstein, Fist & Ringold attorneys were selected for publication in a recent issue of the Oklahoma Bar Journal focusing on education law issues. **Jana R. Burk's** article, "Hagen v. Watts Public Schools: Abuse and Discretion under the Teacher Due Process Act" was published in the October 6, 2007 issue of the Oklahoma Bar Journal. **Jerry A. Richardson's** article, "A Primer on Sexual Harassment Claims Under Title IX" was published in the same issue.

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more in furtherance of its obligations under *Plyler* than it is in furtherance of perpetuating the illegal presence of the child.

Finally, because the legal theory of federal preemption allows Congress to "trump" a state law that conflicts or interferes with its exercise of federal power, and several federal courts have struck state laws on federal preemption grounds (most notably in the education context) that attempted to regulate immigration, any application of the Oklahoma immigration bill with respect to education is particularly vulnerable to attack. See *LULAC v. Wilson*, 997 F. Supp. 1244, 1256 (C.D. Cal. 1995). As such, despite the resolute language in the Oklahoma Immigration Bill, denying illegal immigrant children education-related benefits—especially transportation to and from school—is likely to implicate equal protection liability under federal law. Therefore, in light of federal law and the limited application of the Oklahoma prohibition regarding the transportation of illegal aliens, it is highly unlikely that a school district would ever face liability for transporting students to and from school. Indeed, a school district risks more liability in refusing to transport an illegal alien student than it would in transporting an illegal alien.

In part two of this series we will address the application of the Oklahoma Immigration Bill to adult students. Should you need more specific advice about any of the provisions in the bill, feel free to contact us and we will be happy to discuss the issues with you.

Chalkboard is a Rosenstein, Fist & Ringold publication that addresses current education law issues. *Chalkboard* is published four times a year and is sent without charge to all education clients of Rosenstein, Fist & Ringold and all other persons who are interested in education law issues. We invite you to share *Chalkboard* with your friends and colleagues. We think you will find *Chalkboard* to be informative and helpful with the difficult task of operating our educational institutions.

Chalkboard is designed to provide current and accurate information regarding current education law issues. *Chalkboard* is not intended to provide legal or other professional advice to its readers. If legal advice or assistance is required, the services of a competent attorney familiar with education law issues should be sought.

We welcome your comments, criticisms and suggestions. Correspondence should be directed to Rosenstein, Fist & Ringold, 525 South Main, Seventh Floor, Tulsa, Oklahoma 74103-4508, or call us at (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.