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2011 ISSUE 2

THE OKLAHOMA COURT OF CIVIL APPEALS CLAIRIFIES THE LAW REGARDING TEMPORARY TEACHER CONTRACTS

BY JERRY A. RICHARDSON

In its recent decision in *DeHart v. Independent School District No. 1 of Tulsa County*, the Oklahoma Court of Civil Appeals ruled that the Tulsa School District did not violate Oklahoma law by employing a teacher on three consecutive temporary contracts, for a total of five semesters, when there was a break in service between each temporary contract.

The teacher in *DeHart* had previously been employed by the School District on a continuing contract during the 1993-94 and 1994-95 school years. She then voluntarily left employment with the School District for ten years. The School District reemployed the teacher for the 2005-06 school year on a one year temporary contract and assigned her to teach at a middle school. Prior to the end of the 2005-

06 school year, the teacher was provided written notification that she would not be offered further employment and her temporary contract would expire by its own terms at the end of the current school year.

During the summer of 2006, the teacher learned of an opening at an elementary school within the School District, and she interviewed with the principal for the vacant position. The principal recommended hiring her. Because the teacher's previous temporary contract had expired and she had not been offered a new contract, the teacher had to make application for employment with the School District like any other person seeking employment for the first time. The board of education approved the principal's employment recommendation, and the teacher was hired for the 2006-07

school year and assigned to the elementary school. Because the teacher was considered a new employee, she was placed on a one-year temporary contract like all first-year teachers.

Prior to the end of the 2006-07 school year, the teacher received written notice that she would not be offered reemployment and that her temporary contract would expire by its own terms at the end of the 2006-07 school year. This decision was based in part on concerns by the elementary school principal about the teacher's performance and in part on an anticipated need to reduce staff. After it became clear that no reduction in staff would be necessary, the elementary school principal offered the teacher a one-semester temporary contract

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OKLAHOMA'S PIONEER IN LEGAL EXCELLENCE



SUPREME COURT ADDRESSES *MIRANDA* RIGHTS OF STUDENTS QUESTIONED AT SCHOOL BY POLICE BY CHERYL A. DIXON

The United States Supreme Court ruled 5-4 on June 16, 2011, that a child's age can be a pertinent factor in determining whether a student questioned at school by police regarding suspected criminal activity merits a *Miranda* warning concerning his rights against self-incrimination. It is important to note that the *Miranda* rights at issue apply only to students questioned by police in connection with criminal investigations, not to questioning by school officials re-

garding school disciplinary matters.

In *J.D.B. v. North Carolina*, a 13 year old, 7th grade student was pulled from class by a uniformed police officer assigned to the school as a school resource officer, escorted to a school conference room and questioned by a police investigator for 30-45 minutes with the conference room door closed. Also present during the questioning was the uniformed school resource offi-

cer, the assistant principal, and an administrative intern. Prior to the interrogation the student was given neither *Miranda* warnings nor the opportunity to contact or speak with his guardian, nor was he informed he was free to leave the room.

J.D.B., the student in this case, was suspected of breaking into two homes and stealing various items. The police had first questioned the student five days ear-

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TEMPORARY TEACHER CONTRACTS (CONTINUED FROM PAGE 1)



"This statute was amended during the 2010 legislative session. It now provides, in relevant part, "No teacher shall be hired on a temporary contract by a school district for more than four semesters ..."

during the summer of 2007. The principal made this decision in the belief that the teacher might be more successful if assigned to a lower grade level. The teacher initialed the provisions of the contract specifying that it was a one-semester contract only. Prior to the end of the fall semester, the principal determined not to recommend the teacher for continued employment, and the teacher's employment ended when her temporary contract expired by its own terms on the last day of the fall semester.

The teacher then filed suit, alleging that the School District had violated the statute governing temporary teacher contracts, OKLA. STAT. tit. 70, § 6-101.23(F). The version of that statute then in effect prohibited a school district from hiring a teacher "on a temporary contract ... for more than three semes-

ters" (see side note). The teacher asserted that after her third semester of employment, her temporary contract had been converted by operation of law into a continuing contract. Reasoning that she could be dismissed from a continuing contract only for cause after a due process hearing, which she had not received when her temporary contract expired at the end of the fall semester of 2007, the teacher alleged that she was entitled to reinstatement.

The teacher also alleged that the School District had violated § 6-101.23(G), which provides that "[n]o teacher shall be offered a temporary contract ... without a full written disclosure at the time the position is offered ... which sets forth the terms and conditions of the temporary contract." The teacher argued that § 6-101.23(G) required an additional written disclosure beyond the written terms of the temporary contract itself.

The School District argued that because there was break in ser-

vice between each of the temporary contracts, the statute was not violated. The School District further argued that adopting the teacher's position would transform the three semester provision of § 6-101.23(F) into a lifetime limit on the number of semesters a teacher could be employed on a temporary contract. The School District also asserted that it had fully complied with § 6-101.23(F) because the terms and conditions of the teacher's employment were expressly set forth in the temporary contracts, each of which the teacher had received and had the opportunity to read before signing. The District Court of Tulsa County granted summary judgment to the School District on all of the teacher's claims, and the teacher appealed.

The Oklahoma Court of Civil Appeals affirmed the judgment in favor of the School District. The court ruled that the three semester limitation in § 6-

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101.23(F) did not apply where a teacher was employed on multiple temporary contracts with breaks in service between each. The court rejected the teacher's contention that this would allow school districts to employ teachers on successive temporary contracts and thereby prohibit the teachers from ever gaining career status, noting that such a tactic was foreclosed by the definition of "career teacher" set forth in OKLA. STAT. tit. 70, § 6-101.3(4). That statute specifies that a teacher who completes three consecutive complete school years in one school district under a written contract

obtains career status, regardless of whether the teacher was employed on continuing contract or a temporary contract.

The court also ruled that nothing in § 6-101.23(G) requires that the written disclosure of the terms and conditions of the temporary contract be set forth in a document separate from the temporary contract itself. The teacher filed a petition for certiorari with the Oklahoma Supreme Court, which the court denied on May 19, 2011. Accordingly, the decision of the Court of Civil Appeals is now final.

The Court of Civil Appeals released its decision in DeHart for official publication. Only cases that resolve a novel or unusual question of law are released for publication by the Court of Civil Appeals. Although opinions of the Court of Civil Appeals are not considered binding precedent, decisions that the Court of Civil Appeals releases for official publication are considered to have persuasive effect.

J. Douglas Mann and Jerry A. Richardson of Rosenstein, Fist & Ringold represented the School District throughout this litigation.

MIRANDA RIGHTS OF STUDENTS (CONTINUED FROM PAGE 2)

lier, after he was seen behind a residence in the neighborhood where the crimes occurred. Later, police learned that a digital camera matching the description of one of the stolen items had been found at the student's middle school and seen in the student's possession. The police investigator then went to the student's school in order to further question him about these crimes.

During the questioning at the school, the student initially denied involvement in the home burglaries, but after being urged to tell the truth or face the prospect of juvenile detention, the student confessed to his and a friend's involvement in the crimes. It was only then that the police investigator informed the student that he could refuse to answer questions and was free to leave the closed-door conference

room. The student thereafter provided additional information about the crimes, including the location of items that had been stolen.

After being charged for those crimes, the student's public defender moved to suppress the student's statements and the evidence derived therefrom, arguing that the student had been questioned in a custodial setting without being afforded *Miranda* warnings and that the student's statements were not voluntary. The trial court denied the motion to suppress. Thereafter, the student entered a transcript of admission to the charges but renewed the objection to the denial of the motion to suppress. The court adjudicated the student delinquent, and the North Carolina Court of Appeals and State Supreme Court affirmed. The State Su-

preme Court declined "to extend the test for custody to include consideration of the age . . . of an individual subjected to questioning by police." The U.S. Supreme Court granted certiorari to determine "whether the *Miranda* custody analysis includes consideration of a juvenile suspect's age."

The Court held that so long as a child's age was known to the officer at the time of police questioning, or would have been objectively apparent to a reasonable officer, the child's age is properly included in an analysis as to whether the child is "in custody" for purposes of requiring a *Miranda* warning. The closely divided Court stated that "in many cases involving juvenile suspects, the

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" . . . Miranda rights at issue apply only to students questioned by police in connection with criminal investigations, not to questioning by school officials regarding school disciplinary matters."

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RFR NEWS

Rosenstein, Fist & Ringold announces that effective June 30, 2011, **Andrea R. Kunkel** departed Rosenstein, Fist & Ringold to become staff counsel to the Cooperative Council for Oklahoma School Administrators. Ms. Kunkel was associated with RFR since her graduation from the University of Tulsa Law School twenty-five years ago. She will be missed by her friends at the firm. We all wish Andrea well on her new adventure.

RFR represents more than 300 public schools throughout the State of Oklahoma and we continue to provide counsel in all areas of education law and general civil practice. Our special education services include comprehensive representation in special education matters, including general special education advice and representation and assistance with IEP's, due process hearings, appeals and litigation. Attorneys practicing in the special education law practice area are **John Moyer, Jr., John Howland, Karen Long, Bo Rainey, and Cheryl Dixon.**

**RFR SPEAKER
SHOWCASE**

Karen Long will speak at the annual summer conference of the Oklahoma Department of Career and Technology Education at the OSU Tulsa campus on August 2. Her topic will be the Americans with Disabilities Act.

MIRANDA RIGHTS OF STUDENTS (CONTINUED FROM PAGE 3)

custody analysis would be nonsensical absent some consideration of the suspect's age." "Neither officers nor courts can reasonably evaluate the effect of objective circumstances that, by their nature, are specific to children without accounting for the age of the child subjected to those circumstances." Indeed, "the effect of the schoolhouse setting cannot be disentangled from the identity of the person questioned. A student – whose presence at school is compulsory and whose disobedience at school is cause for disciplinary action – is in a far different position than say, a parent vol-

unteer on school grounds to chaperone an event, or an adult from the community on school grounds to attend a basketball game. Without asking whether the person 'questioned in school' is a 'minor,' the coercive effect of the schoolhouse setting is unknowable." The Court stated that it "is beyond dispute that children will often feel bound to submit to police questioning when an adult in the same circumstances would feel free to leave."

Based on the Court's opinion, if a student is questioned at school by law

enforcement, the objective circumstances surrounding the questioning must be evaluated to determine whether a reasonable person in the student's position would understand his freedom to terminate the questioning and leave. This evaluation should include consideration of the student's age.

Again, the *Miranda* rights at issue apply only to students questioned by police in connection with criminal investigations, not to questioning by school officials regarding school disciplinary matters.

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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.