

# Chalkboard



An Education Newsletter from the Attorneys of Rosenstein, Fist & Ringold

2014 Issue 1

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## The Suspens(ion) is Killing Me . . . and What is Immorality Anyway?

by Samantha S. Marshall

Senate Bill 679 modified the state's student suspension statute, Okla. Stat. tit. 70, § 24-101.3, by removing "immorality" and "adjudication as a delinquent for an offense that is not a violent offense" from the many grounds listed for suspension. This amendment, which became effective November 1, 2013, has left administrators and teachers alike scratching their heads—do these revisions mean a school district cannot suspend a student who shows up to school drunk or otherwise under the influence? who is gambling? who is habitually verbally abusive to other students or staff? What about a student who is a distraction due to arguably immoral or controversial behavior, such as the Florida student who was expelled after he was discovered performing in pornographic films? If your gut reaction is, "No, this cannot be right,"

you are correct – that is, as long as a school district has policies or regulations in place that prohibit such behavior.

Okla. Stat. tit. 70, § 24-101.3 specifically lists, among other offenses, "violation of a school regulation" as a ground for suspension. Section 24-101.3 does not exclude immorality or delinquency from offenses that may be prohibited by school policies.

school districts are free to prohibit, by policy, immorality or delinquent behavior . . . offenses that could fall into one of these two categories could be, and probably are, prohibited by another policy.

Thus, school districts are free to prohibit, by policy, immorality or delinquent behavior. Moreover, offenses that could fall into one of these two categories could be, and probably are, prohibited by another policy. For instance, gambling is an offense that could fall under the category of immorality, but school districts that have specifically indicated that suspension is a possible consequence for

such behavior need not rely on an immorality prohibition to suspend a student for such conduct.

In this post-SB 679 world, school districts should take time to review their policies and regulations to ensure that behavior the school district would have determined to be suspension worthy prior to SB 679 is now grounds for suspension by policy, either generally or specifically. A school district may find a prohibition against specific conduct, in addition to or as opposed to an ambiguous prohibition against "immorality," more effective and preferable. Whatever approach the school district takes, it should begin with an examination of current policies and regulations.

## Are Student Absences For Health Issues Getting the Consideration They Demand?

*by Cheryl A. Dixon*

Under the IDEA's "child find" mandate, school districts are required to seek out students who are potentially IDEA-eligible and refer those students for an appropriate evaluation. Likewise, Section 504 of the Rehabilitation Act contains its own child find requirement that is similar, but not identical, to the child find requirement of the IDEA. If your school district has a student that is excessively absent, consideration should be given as to whether an evaluation under the IDEA and/or Section 504 is warranted. And, if the student has already been identified, consider whether the student's IEP or 504 Plan needs to be changed to address the absences.

In two recent decisions, the United State Department of Education's Office of Civil Rights (OCR) has addressed school districts' responsibilities under the IDEA and Section 504 in light of excessive absenteeism. In the first, OCR found a Florida school district

violated its child find duty because it failed to timely evaluate two kindergartners who had missed numerous school days for consecutive years. OCR reasoned that the students' truancy, and the doctors' notes provided to school personnel, were indicators that the students' health concerns were impacting their learning and other major life activities, thereby triggering the school district's duty to evaluate.

In the second case, OCR found that an IEP developed by a Michigan school district failed to provide a student with a free appropriate public education when it not only failed to properly address the student's excessive absences resulting from his medical condition (and the student's inability to catch up on missed work), but also impermissibly removed the student from his core academic classes and relegated him to a certificate program instead of keeping him on a diploma track .

If your school district has a student who is excessively absent or has a known medical condition, be sure district staff are giving the situation the individualized attention it requires under the IDEA and Section 504. If you have any questions on this, or any other special education issue, please contact your school district's legal counsel.

## Lease-Purchase Agreements

*by Kelsey K. Bardwell*

Looking to purchase equipment for your school district? Many times, school districts will choose the alternative of lease-purchasing equipment instead of purchasing the equipment outright.

If school districts cannot obligate district funds in a future fiscal year, as provided by Oklahoma law, how is a lease-purchase agreement with a term extending beyond the

current fiscal year permissible? To satisfy this requirement, lease-purchase agreements are written to provide that if the school district's board does not appropriate funds for the renewal of the lease, then the lease will terminate as of June 30th and the equipment will be returned to the leasing company.

However, it is not always that simple. School districts should be very careful when entering into lease-purchase agreements. The terms of the agreement could provide that in the event of non-appropriation, meticulous steps must be followed to notify the leasing company of the non-appropriation and the return of the equipment. Additionally, these agreements will often contain a provision that the non-appropriation must be legitimate and may not be simply to "get out of" the agreement and enable the school district to lease-purchase newer equipment from another company. Sometimes, the agreements require an acknowledgement from the school district's legal counsel that the non-appropriation actually occurred and was justifiable. An early termination of a lease-purchase agreement could also adversely affect a school district's credit rating.

There are many factors a school district should consider when contemplating the lease-purchase of equipment. A few include the following:

- Is the district currently in a lease-purchase agreement with another leasing company?
- What are the steps that the district must follow to terminate the agreement?
- Does the new lease-purchase agreement comply with Oklahoma law?

Of course, there are other factors as well. If your school district would like assistance with

the review of lease-purchase agreements, contact your school attorney.

## Temporary Teacher Contracts and Due Process

*by Staci L. Roberds*

Under Oklahoma law, teachers who are employed on temporary contracts are not subject to the provisions of the Teacher Due Process Act of 1990, including notice and a hearing regarding termination of employment. Contracts for temporary teachers generally are for a stated period of time and terminate upon a specific date in the contract without further notice or a reason for termination being provided by the school district. However, a school district can create a situation where a temporary teacher is entitled to notice and a hearing on a temporary contract when: (i) the teacher is not provided with full written disclosure that the contract is temporary at the time the position is offered; (ii) the teacher is employed on a temporary contract for the entire school year and the school district seeks to dismiss the teacher before the expiration of the temporary contract; or (iii) the language of the contract expands the teachers' rights beyond the statutory requirements.

If a school district fails to provide written disclosure of the temporary nature of the contract (which may be the temporary contract itself), the teacher will be considered employed on a continuing contract basis and afforded all the rights set forth in the Teacher Due Process Act of 1990. Moreover, if a school district seeks dismissal of a temporary teacher before the contract's expiration, the teacher must be afforded due process protections provided under the Act. Further, courts have taken the view that a temporary teacher may be entitled to notice and/or a hearing when a board of education expands such rights in the language of the temporary

contract, holding that a board of education should be required to follow such standards when it has elected to set higher standards by contract or by policy than the minimum standards required under Oklahoma law.

In order to avoid these types of situations, school districts must be careful to satisfy the statutory requirement for full written disclosure to teachers of the temporary nature of a contract and be prepared to comply with the statutory requirements for due process if a temporary teacher is dismissed prior to the expiration of a temporary contract. School districts should also be aware of the inclusion of language in a temporary contract that could be construed to afford due process rights to temporary teachers that exceed statutory requirements.

## Spring Law Seminars

Friday, February 21st, 2014

Mid-America Technology Center  
Health Building  
Seminar Center  
27438 State Hwy 59  
Wayne, OK 73095

Friday, March 7th, 2014

Northeast Technology Center  
Harold Anglin Building  
Seminar Center  
6195 W. Hwy 20  
Pryor, OK 74361

Friday, April 4th, 2014

Western Technology Center  
Seminar Center  
621 Sooner Drive  
Burns Flat, OK 73624

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*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 (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

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