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Common Pitfalls School Districts Face When Implementing a Reduction-in-Force

by Staci L. Roberds

There are several reasons a school district may decide to utilize a reduction-in-force ("RIF") of its staff. For example, a district may determine that a certain academic program needs to be overhauled and positions associated with that program may no longer be needed. School districts may also face budget shortfalls which require that certain job duties be combined or that certain programs be discontinued. Whatever the reason, school districts should be aware of the common pitfalls associated with a RIF in order to survive a legal challenge.

- School districts should not utilize the RIF process to terminate an employee for a performance issue. This is not the purpose of a RIF and could open a district up to a legal challenge by the reduced employee.
- School districts should review and if necessary revise their RIF policies (and negotiated agreement through negotiation, if appropriate) well in advance of a RIF. School districts do not need a separate RIF policy for all types of

employees. For example, a district does not need a separate RIF policy for administrators or support employees. However, a school district must have a RIF policy for reducing teachers, and the plan must include clear criteria to determine which teachers to reduce. If a district does not have a plan or if it fails to follow it, the reduction may be overturned by a court as arbitrary.

- School districts should not assume that the last employee hired is the person who should be reduced. The position being eliminated is the primary consideration. Also, once the Oklahoma Teacher and Leader Effectiveness Evaluation System is fully implemented by a school district, the district must use the TLE evaluation ratings of teachers and administrators as the primary basis for determining retention or reassignment of the employee when implementing a RIF. When comparing similar types of employees, seniority does not have to be the determinative factor in retention or reduction decisions.

- School districts must ensure due process is provided if necessary. For example, administrators and support employees may be dismissed or nonreemployed for a RIF, and they can be dismissed mid-year with immediate effectiveness. They must be provided notice and given a hearing if requested within ten days after receiving the notice. Career and probationary teachers may be nonreemployed for a RIF, but the decision must be made on a consideration of the positions that need to be eliminated (not on the personal performance of the individual teachers), and they must receive notice prior to the first Monday in June. Dismissal of a career teacher for a RIF is a difficult process and not advised without involvement of the school district's attorney. However, probationary teachers may be dismissed for "cause" under the Teacher Due Process Act, with the cause being a lack of funds, reduction in force, or both. However, one local court in the Western District of Oklahoma has ruled that this cannot be done.

- Although there is currently no Oklahoma statute or case law that requires recall of a reduced employee, at least one state court has determined that a reduced tenured teacher had the right to fill a vacancy within the next school year for a position for which she was qualified. For that reason, school districts should consider recalling a reduced employee if the exact position becomes available in the next school year. If the position is not accepted, the employee should be removed from the recall list.

As the above points illustrate, implementing a RIF is a complicated process and raises several legal issues for a district. If a school district is contemplating a RIF, the district's best bet is to first contact its school attorney with all questions in order to ensure the district uses the proper procedure.

Correcting Payroll Errors Without a Friendly Suit

by Adam S. Breipohl

Like any employer, school districts occasionally make payroll errors and accidentally underpay employees, requiring them to correct the error by paying the employee for their work. But unlike a private employer, when a school district makes such an error and does not recognize it until the fiscal year has ended, constitutional restrictions on school finance can make correcting the error very cumbersome. However, a helpful Oklahoma statute can streamline the process if the error is caught relatively quickly.

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Article 10, §26 of the Oklahoma Constitution prohibits school districts from becoming indebted by an amount exceeding the income and revenue provided for a fiscal year, which means that a district cannot use funds from the current fiscal year to pay an obligation that it incurred in a previous year. See *Southern Corrections Sys., Inc. v. Union City Pub. Schs.*, 64 P.3d 1083, 1090–91 (Okla. 2002) (recognizing that Article 10, § 26 "forces school districts to operate on a cash basis, and it prevents indebtedness payable

out of tax revenues from extending beyond one year.”). Therefore, when a district underpays an employee and does not correct the error in the same fiscal year, in many cases the employee must file a lawsuit known as a friendly suit against the school district, where the plaintiff employee alleges that the district is indebted to him and the district admits liability. This lets the employee obtain a judgment against the district, which in turn allows the district to pay the employee out of its sinking fund without violating the Oklahoma constitution.

However, districts should be aware of an Oklahoma statute that can make the process simpler if the district catches an error made during the prior fiscal year relatively soon after the new fiscal year begins on July 1. That statute, OKLA. STAT. tit. 70, § 5-187, states:

“All unencumbered balances, if any, as shown by the officer charged with keeping the appropriation and expenditure records of the school district on hand at the close of day June 30, may remain as a credit for said fiscal year up to the close of day September 30.”

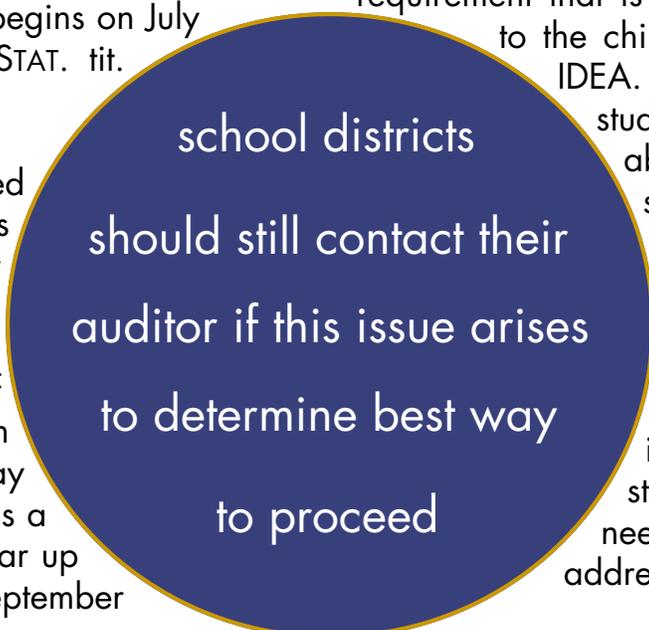
Under this statute, if a school district makes a payroll error and fails to pay an employee as much as the employee was supposed to earn, the payment that should have been made would be an unencumbered balance under Section 5-187 and would remain as a credit for the previous fiscal year until September 30. Therefore, if a school district is able to detect a payroll error before September 30 of the next fiscal year, the district can correct the

error and pay the employee without going through a friendly suit. However, school districts should still contact their auditor if this issue arises to determine the best way to proceed as well as to prevent such errors from happening again.

Reminder to Consider Student Absences For Health Issues

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 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, does the student’s IEP or 504 Plan need to be changed to address the absences.



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In two recent decisions, the United States 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, together with the doctors’ notes provided to school personnel explaining the

absences, was an indicator that the students' health concerns were impacting their learning and other major life activities, and thereby triggered 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 and inability to catch up on missed work resulting from his medical condition, 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 District has a student that is excessively absent or has a known medical condition, be sure District staff is 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 District's legal counsel.

2016 Official Oklahoma Holidays

Friday	January 1, 2016	New Year's Day
Monday	January 18, 2016	Martin Luther King, Jr. Day
Monday	February 15, 2016	Presidents' Day
Monday	May 30, 2016	Memorial Day
Monday	July 4, 2016	Independence Day
Monday	September 5, 2016	Labor Day
Friday	November 11, 2016	Veterans' Day
Thursday & Friday	November 24 & 25, 2016	Thanksgiving
Monday & Tuesday	December 26 & 27, 2016	Christmas

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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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