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An Overview of the Types of School District Annexation

by Staci L. Roberds

Recent cuts to the budgets of Oklahoma school districts may have some districts considering the annexation process. Oklahoma law regarding annexation is convoluted, and for that reason, this article will provide only a brief overview of the types of annexation allowed under the Oklahoma statutes. Future articles will focus in greater detail on the more common types of annexation and information specific to those types.

Annexation of an Oklahoma school district may be accomplished in five different ways: (i) by board resolution; (ii) by petition; (iii) by mandatory annexation; (iv) by a vote to dispense with school; or (v) by consolidation.

- **Board Resolution.** Annexation by board resolution may be of an entire school district or, less commonly, a portion of a district. This method requires that an election be held if the two boards of education for the school districts involved in the proposed annexation approve the calling of an annexation election. Once a

resolution is passed by both boards of education, it must be submitted to the Oklahoma State Superintendent for the State Department of Education ("SDE"), who is responsible for calling the election and providing proper notice. The county election board conducts the election. The voters of the school district being annexed must approve the annexation. Once the annexation is approved and the time for an appeal has passed, the board of education for the annexed district will be declared abolished by the State Superintendent. If the annexation is of an entire school district, the annexed district will assume its full proportion of all legal bonded debt of the receiving district, and the receiving district will assume its full proportion of all legal bonded debt of the annexed district. The receiving district will also acquire all the property, assets, and current debts and obligations of the annexed district.

- **Petition.** Annexation by petition pertains only to the annexation of an entire school district. Upon the filing of a

petition signed by a majority of the school district's voters in the district proposed to be annexed, the State Superintendent must call an annexation election without the approval of the board of education for that district. The majority requirement is based on the highest number of voters voting in a regular school election in the district to be annexed for the preceding five years. However, even if a petition is filed, it must still be approved by the receiving school district. Once initiated by petition, the annexation process and its results are the same as with an annexation initiated by board resolution.

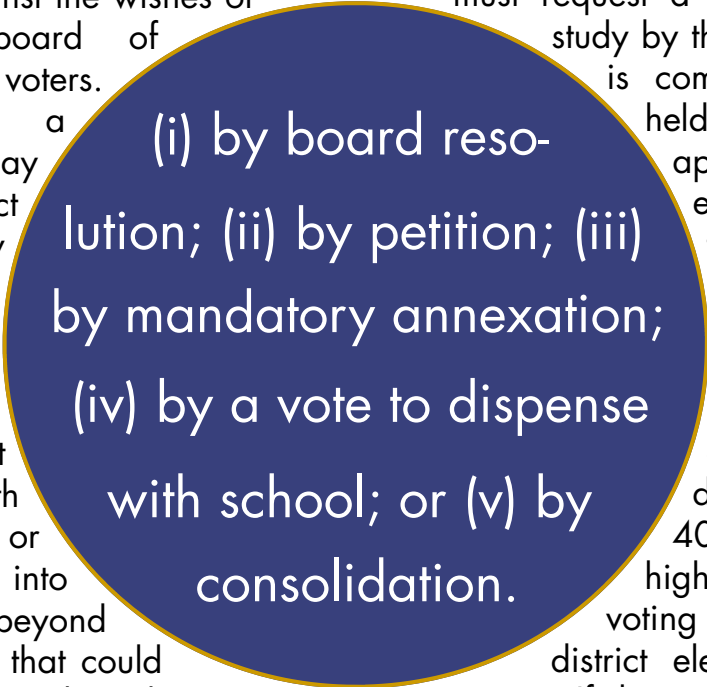
- **Mandatory Annexation.** This type of annexation is involuntary and may be ordered by the SDE against the wishes of a school district's board of education and its voters. Examples of when a mandatory annexation may occur include: (i) a district is declared academically at risk; (ii) a district is no longer accredited by the SDE; (iii) a district can no longer pay out; and (iv) a district, without officially dispensing with school, fails to open or maintain a school, taking into account circumstances beyond the control of the district that could cause a normal delay. When the SDE undertakes a mandatory annexation of a district, the district may be split amongst several districts rather than being annexed to one district.

- **Vote to Dispense with School.** This method of annexation occurs when at least 40% of a school district's electors sign a petition requesting an election to vote to dispense with school. This is not an

annexation election because the district's voters are not deciding whether they want to annex into another district – they are deciding whether they want to close the school. If the majority of the district's voters approve closing the school, it is the SDE's responsibility to decide into what district the dispensing district is annexed.

- **Consolidation of Districts.** This type of annexation involves the consolidation of one or more districts into one new district. It requires that certain preliminary steps be taken prior to an election on consolidation. Prior to any election, one of the boards of education of one of the districts to be consolidated (or 10% of the registered voters for the district) must request a consolidation feasibility study by the SDE. Once the study is completed, an election is held based upon either the approval of the boards of education for the districts to be included in the proposed consolidation or upon a petition signed by at least 40% of the district electors in each affected school district. The required 40% means 40% of the highest number of voters voting in a regular school district election in the past five years. If the proposed consolidation of districts is approved by the majority of voters in each affected school district, the SDE will declare the old district dissolved and the new district established. All assets, liabilities, and powers and duties of the dissolved school districts are then passed to the new district.

If a school district is considering any method of annexation, it should contact its school district attorney for additional information and for guidance through the process.



The Every Student Succeeds Act Promises Significant Changes to the Federal Role in Education

by Adam S. Breipohl

The Every Student Succeeds Act (ESSA), a new federal statute signed into law by President Obama in December 2015, aims to transform the federal role in the nation's education system. The ESSA is the latest in a series of re-authorizations of the Elementary and Secondary Education Act of 1965, replacing 2002's No Child Left Behind Act (NCLB), and promises to reverse the trend of increasing federal involvement in states' education systems under NCLB by offering increased flexibility to state governments in setting standards, allocating resources, and achieving goals for their school systems. This article provides an overview of selected ESSA provisions that are likely to be relevant to school district administrators.

In keeping with its broad theme of delegating more authority to the states, the ESSA gives states more autonomy in setting academic standards, monitoring of student outcomes, and addressing issues with underperforming schools. States will be required to adopt "challenging" academic standards, but given significant discretion to decide what specific standards they will use; in fact, the statute affirmatively prohibits the federal government from interfering by mandating or incentivizing states to use certain standards, including Common Core.

The ESSA also reduces the NCLB-era emphasis on standardized testing, implementing a relaxed standardized testing regime requiring states to test students in reading and math in grades 3 through 8 and then once in high school, although ESSA maintains the federal requirement for 95 percent participation in tests and increased the requirements that states keep track of testing data for different "subgroups" (e.g. English language learners, students in poverty, etc.).

Furthermore, the "highly qualified" system and federally mandated teacher evaluation system have been eliminated, leaving states the option to reduce or eliminate the role of test scores in teacher evaluations. For instance, New York has already opted to adopt emergency regulations that would end the use of test scores in teacher evaluations until at least 2019-2020. The ESSA also combines around 50 federal programs into one \$1.6 billion block grant, giving states more flexibility to spend funds that were previously set aside for certain purposes.

While its broad focus is on giving states more freedom to set their own education policies, the ESSA also introduces some new mandates for states that could directly affect school districts. For instance, states will now be required to identify and intervene to "turn around" the lowest-performing 5% of their schools, as well as any high schools where the graduation rate is below 67%. Again, states are given significant latitude as to how they go about

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doing so, but ESSA does require affected school districts work with teachers, staff, and other stakeholders to develop an evidence-based plan for how to intervene, which will in turn be monitored by the state.

Much of the impact on school districts in Oklahoma by the ESSA is still unknown at this time; the statute is based on giving more latitude to states to set their own policies for education issues, so the practical effects of the new law on Oklahoma school districts necessarily depend greatly on how the Oklahoma Legislature and State Department of Education choose to use their newfound freedom when the statute goes into effect at the start of the 2017-2018 school year. However, it seems likely that school districts can expect significant changes to the legal landscape in which they operate in the coming years, so administrators should keep abreast of new developments with the ESSA and contact their legal counsel if any issues arise regarding compliance with state or federal law.

What Constitutes A Change of Placement

by Cheryl A. Dixon

In some situations, the determining of whether there will be or has been a change of placement for a special education student will require a fact specific inquiry. Although neither the text nor legislative history of the IDEA defines the phrase "change of placement," courts have given the term an expansive reading, focusing on "whether the decision is likely to affect in some significant way the child's learning experience." At a minimum, to constitute a change of placement there must be a fundamental change in or

elimination of a basic element of the student's education program.

It is well established that a long term disciplinary removal of a student with a disability is construed as a change of placement and implicates the IDEA's procedural protections. Such protections may include requiring a school district to evaluate the student, conducting an IEP Team meeting, proposing an alternate special education plan, and providing special education services pending an agreed upon placement. Similarly, courts have held that graduation is a change of placement which triggers the protections of the IDEA and its stay-put provision.

However, what about a situation where a special education student is removed from a school district's enrollment pursuant to State law due to excessive absences? Just like a long term suspension or graduation, courts have held that the unilateral disenrollment of a special education student, which results in the absolute termination of a student's special education program (and purportedly the termination of the school district's responsibility to deliver a free appropriate public education to the student) is a change of placement. Therefore, the procedural safeguards of the IDEA apply. At a minimum, you must provide written notice prior to removing the student from your district's enrollment. There are other considerations as well, such as the reason for the student's excessive absences and whether the student is medically unable to attend school such that the student must be afforded an accommodation from your district's attendance policy. If you have any questions or concerns regarding a student's change of placement, or any other special education issue, please contact your District's attorney.

VALUE ADDED SERVICE—OUR COMMITMENT TO YOU

As a value added FREE service to our Education clients, RFR is pleased to announce that we will once again make available our legislative tracking resources in 2016.

The firm monitors a significant number of bills each session. We specifically identify legislation school administrators will find of interest, as well as bills CFOs will want to review. Even if you do not want to track legislation on a weekly basis, you will want to look at the initial list of 2016's potential new laws. In addition to multiple bills regarding TLE, testing, and teacher salary increases, there are also bills this year related to state aid, caps on superintendent salaries, vouchers, and number of other controversial subjects.

If you would like access to this free resource, please email our Michelle Siegfried (msiegfried@rfrlaw.com) for a registration link.

We look forward to working with you this upcoming legislative session.

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Chalkboard is a Rosenstein, Fist & Ringold publication that addresses current education law issues. *Chalkboard* is published monthly through the school 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 (918) 585-9211 or 1-800-767-5291. Our FAX number is (918) 583-5617. Help us make *Chalkboard* an asset to you.

Please use the form on www.rfrlaw.com (located on the Resources page) to add or change *Chalkboard* e-mail addresses.