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The Uninterrupted Scholars Act and DHS Access to Education Records

by Adam Breipohl

When faced with a request for access to students' records by an employee of the Oklahoma Department of Human Services ("DHS"), school districts must take care to ensure that their actions comply with applicable state and federal laws. In general, under the Family Educational Records Privacy Act ("FERPA"), a federal statute, a school district shall not disclose the education records or personally identifiable information of students without the written consent of the student's parents unless an exception under FERPA allows the disclosure. In particular, under Oklahoma law, when certain state agencies (including DHS) request student records, school districts **must** disclose the records if doing so would be permissible under FERPA. See Okla. Stat. tit. 70, § 24-101.4(B). The Uninterrupted Scholars Act ("USA") is a Federal statute passed in 2013 that adds two new considerations to a school district's obligations in connection with requests for access to the education records of students in certain situations.

The first rule introduced in the USA creates a new exception to the usual requirement for parental consent before disclosure of education records under FERPA; it allows disclosure of education records without parental consent when (1) the request for education records is by "an agency caseworker or other representative of a State or local child welfare agency ... who has the right to access a student's case plan" and (2) "such agency or organization is legally responsible, in accordance with State or tribal law, for the care and protection of the student." 20 U.S.C. § 1232g(b)(1)(L). Regulatory guidance issued by the United States Department of Education states that this rule is intended to apply to a situation where the student whose records are being requested is in a foster care placement; in effect, this provision requires disclosure of student records of a student in a foster care placement to his or her DHS case worker.¹ The apparent policy behind this exception is that when the DHS case worker requests records for a student in

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foster care, it would be illogical, or perhaps impossible, to require the school to obtain permission from the student's parents, who are no longer responsible for the student's day-to-day care and protection (and may be absent, disinclined to cooperate with DHS, etc.) for DHS to obtain the records.

A second relevant provision of the USA modifies FERPA's rule that while a school district must disclose a student's education records pursuant to a judicial order, "parents and the students ... [must be] notified of all such orders or subpoenas" before the school complies with the order and releases the records. Under this provision of the USA, "when a parent is a party to a court proceeding involving child abuse and neglect ... or dependency matters, and the order is issued in the context of that proceeding, additional notice to the parent by the [school district] is not required." 20 U.S.C. § 1232g(b)(2)(B). Like the first rule change, the reason for this change is practical in nature. Giving notice to a student's parent before a school discloses education records pursuant to a court order is usually necessary in order to give the parent a chance to contest the court order before the information is disclosed. However, where the court order for a school to disclose education records is issued in these kinds of court proceedings, further notice to the parent is unnecessary because notice to the parties (including the parent) would already have

been required in the court proceeding. By virtue of being a party to the court proceeding, the parent would have notice of the order and an opportunity to challenge the order.

Overall, when DHS requests student records from a school district, the district should be aware of these additions to FERPA when faced with claims that the case worker does not need parental permission or that notice to the student's parents is not required for the district to produce the records. However, districts should also take care to verify the identity and credentials of the case worker before making the disclosure, especially if the request is made by phone. Districts should consider contacting their legal counsel when they receive a request for records subject to FERPA to make sure its response complies with all state and federal laws.

Annexation by Board Resolution

by Staci L. Roberds

The most common type of annexation utilized by Oklahoma school districts is annexation by board resolution. Under this type of annexation, an election must be held when the two boards of education affected by the proposed annexation approve the calling of an annexation election. This occurs when the boards of education for the school districts involved in the annexation pass a resolution approving the proposed annexation.

The resolution passed by both boards of education must include the date when the annexation will become effective if approved by the voters. Once passed, the resolution must be submitted to the Oklahoma State Superintendent of Public Instruction, who is responsible for calling the election and providing proper notice. The election must

¹ See UNITED STATES DEPARTMENT OF EDUCATION, GUIDANCE ON THE AMENDMENTS TO THE FAMILY EDUCATIONAL RIGHTS AND PRIVACY ACT BY THE UNINTERRUPTED SCHOLARS ACT 5-8 (May 27, 2014), available at: <http://www2.ed.gov/policy/gen/guid/fpco/ferpa/uninterrupted-scholars-act-guidance.pdf>

take place not less than sixty (60) days and no more than ninety (90) days after submittal of the resolution. The county election board conducts the election. Whether the annexation is of an entire school district or only a portion of a district, the voters of the school district being annexed must approve the annexation. In the case of a school district having only a portion of its district annexed, if the district's board of education approved the annexation, then approval by only the majority of the voters of the affected area is necessary.

If the annexation is approved by the voters of the annexed district, then within five (5) days, the State Superintendent must issue an order declaring the annexation as requested. The order must then be sent to the State Board of Education, the Oklahoma Tax Commission, the County Clerk, the County Treasurer, and the County Assessor of each affected county. Until the time for appealing the annexation election has passed, the annexation will not become effective. Within ten (10) days after the State Superintendent issues the order, an appeal may be filed by 25% of the school district electors who were eligible to vote at the annexation election in the District Court of the county where the affected property lies. If the annexation is not appealed, it will become effective upon the agreed date in the resolution. The State Superintendent will then abolish the board of education of the annexed district. However, if the annexation was of an entire school district, the receiving district, if it has a five-member board of education, may decide to form a seven-member board of education.

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. Examples of current debts and obligations may include items such as judgments, unemployment compensation obligations, worker compensation obligations, liability for violation of civil rights, personal injury, underpaid wages, and negotiated agreements. Thus, it is important that the school districts involved in an annexation consider certain issues prior to annexation. For example, if the receiving district does not want to keep all employees from the annexed district, the annexed district may want to utilize a reduction in force of teachers or the nonreemployment of support employees and administrators. If no action is taken, the employees of the annexed district will become employees of the receiving district because it assumes all obligations of the annexed district. Teachers will be treated as though they have been teachers of the receiving district for the entire time they taught in the annexed district.

Moreover, the receiving district of an entire district also acquires title to, and takes permanent custody of, all individual scholastic and other permanent records relating to each student who was previously enrolled in the annexed district. Further, the receiving district receives all school buildings

Annexation by board resolution may be the most common type of annexation utilized by school districts, but it is a multi-faceted process

in the annexed area and all obligations related to those school buildings. However, if a building or other structure of the annexed district was used at least once each ninety days for public gatherings, it may not be rented, moved, or sold by the receiving district without the approval of a majority of the district electors in the annexed district voting on the proposition.

Annexation by board resolution may be the most common type of annexation utilized by school districts, but it is a multi-faceted process for the involved districts. Because there are so many considerations for school districts contemplating annexation by board resolution, whether as the district being annexed or the receiving district, a school district should seek assistance with the annexation process from its school district attorney.

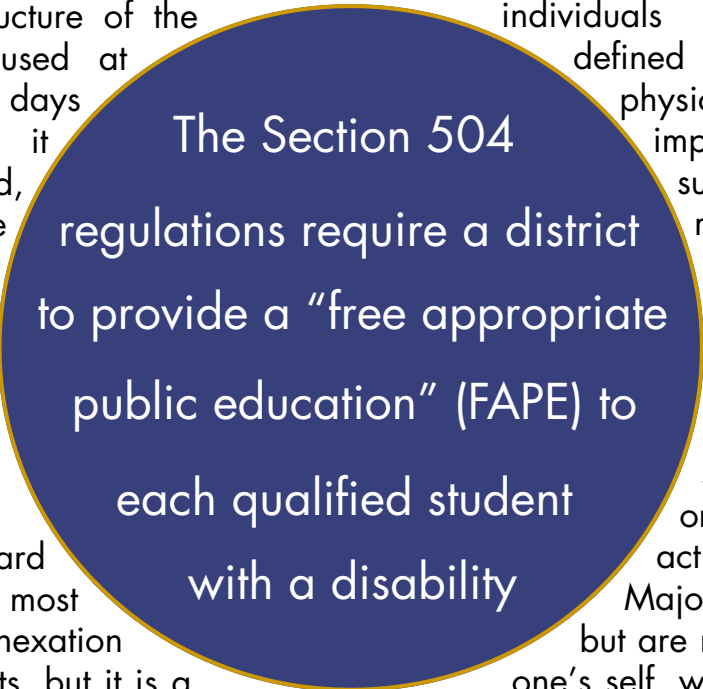
One More Consideration After Finding A Student Ineligible For An IEP

by Cheryl A. Dixon

If your school district finds a student with a disability ineligible for special education pursuant to the IDEA, that student's eligibility for a Section 504 Plan must also be determined. Section 504 of the Rehabilitation Act of 1973 (Section 504) is a federal civil rights law which provides that no qualified individual with a disability shall, solely by reason of her or his disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving

Federal financial assistance, including those of public school districts. Under Section 504, individuals with disabilities are defined as persons with a physical or mental impairment which substantially limits one or more major life activities. People who have a history of, or who are regarded as having, a physical or mental impairment that substantially limits one or more major life activities are also covered. Major life activities include, but are not limited to, caring for one's self, walking, seeing, hearing, speaking, and learning. Therefore, even though a student with a disability may not meet the eligibility requirements of the IDEA, the student will qualify for a Section 504 plan if the student's disability substantially limits a major life activity, such as learning.

The Section 504 regulations require a district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability who is in the district's jurisdiction, regardless of the nature or severity of the disability. Under Section 504, FAPE consists of the provision of regular or special education and related aids and services designed to meet the student's individual educational needs as adequately as the needs of the district's nondisabled students are met. Failure to provide a qualified student with a Section 504 Plan could impose liability on the district for failing to provide the student FAPE and/or for discrimination in failing to permit the student equal access to the district's programs or services. If you have any questions or need guidance on this issue, please contact your district's lawyer.



The Section 504 regulations require a district to provide a "free appropriate public education" (FAPE) to each qualified student with a disability

Best Lawyers® Releases Its Award Listing for 2016

Best Lawyers® is the oldest and most respected peer-review publication in the legal profession. A listing in Best Lawyers is widely regarded by both clients and legal professionals as a significant honor, conferred on a lawyer by his or her peers. For more than three decades, Best Lawyers lists have earned the respect of the profession, the media, and the public, as the most reliable, unbiased source of legal referrals anywhere.

Best Lawyers Metropolitan Tier 1 Tulsa Ranking - Rosenstein, Fist & Ringold:

Employee Benefits (ERISA) Law
Litigation - Labor & Employment
Real Estate Law

Best Lawyers Metropolitan Tier 2 Tulsa Ranking - Rosenstein, Fist & Ringold:

Bankruptcy and Creditor Debtor Rights / Insolvency
and Reorganization Law
Employment Law - Management
Health Care Law
Litigation - ERISA
Trusts & Estates Law

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John E. Howland – Bankruptcy and Creditor
Debtor Rights / Insolvency and Reorganization Law

Karen L. Long – Education Law, Employee Benefits
(ERISA) Law, Employment Law – Management,
Litigation – ERISA, Litigation – Labor and
Employment

J. Douglas Mann – Education Law

John G. Moyer, Jr. – Education Law

A.F. Ringold – Health Care Law

Eric P. Nelson – Education Law, Real Estate Law

Coleman L. Robison – Real Estate Law

Jerry L. Zimmerman – Trusts and Estates

**Top Listed Designation in Tulsa Metro Area in
Education Law with 4 Lawyers Listed.**

**Top Listed Designation in Oklahoma in
Education Law with 4 Lawyers Listed.**

"Lawyer of the Year" Award 2016:

Karen L. Long - ERISA Litigation Law

J. Douglas Mann - Education Law

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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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