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Emerging and Important Issues in Special Education

by Cheryl A. Dixon

There are currently legal contests occurring in special education at both the state and national level. Recently, there has been an increase in special education due process hearing complaint filings against school districts in Oklahoma. Several of these involve students who have been placed on a shortened school day due to behavior. On December 20, 2016, the Oklahoma State Department of Education, Special Services Division, issued a Memorandum addressing this issue, noting that it is improper to shorten a student's school day as a means of discipline. If your district is at this point with a student, consider involving a qualified and experienced behavioral consultant. Like the old saying goes, an ounce of prevention is worth a pound of cure.

On the national level, it is important to note that there are two special education cases currently pending before the United States Supreme Court. The first case, *Andrew F. v. Douglas County Sch. Dist.*, involves the parents of an autistic student from Colorado who sued the local

school district for private school tuition because the parents claim their student did not receive a "meaningful" education in the public school. The school district prevailed in the U.S. Court of Appeals for the 10th Circuit (the district in which Oklahoma sits), which held that the district is only required to provide educational benefits that are more than minimal or trivial. Similar standards have been applied by six other circuit courts. However, the Third and Sixth Circuits have split from those circuits and have ruled that schools must supply a "meaningful educational benefit." Therefore, it is unclear whether school districts have to provide "meaningful" or "more than trivial" educational benefits to students. Furthermore, what qualifies as "meaningful" or "more than trivial" can easily vary from student to student. This confusion likely stems from the Supreme Court's 1982 decision in *Board of Education v. Rowley*, which says not only that schools must provide "some educational benefit" to disabled students, but also that this benefit must provide the student "access" to education

that is “meaningful.” The Court’s decision in *Andrew F.* will likely be one of the most significant IDEA decisions since the *Rowley* case.

The second case before the Court, *Fry v. Napoleon Community Schools*, involves a Michigan school district’s refusal to allow a student to bring her trained service dog to school with her. The student was born with cerebral palsy and her mobility is impaired. The student’s parents filed a lawsuit in federal district court, arguing that the school district violated the Americans with Disabilities Act and the Rehabilitation Act, (two federal civil rights laws) when it barred the service dog from attending school with the student. The parents did not allege that the District failed to provide a free appropriate public education under the Individuals with Disabilities Education Act (“IDEA”). The question before the justices is whether the student’s parents could take their case directly to federal court, or whether they were first obligated to exhaust their administrative remedies by first going through the state administrative proceedings under the IDEA which requires the filing of a due process hearing complaint. The parents argue that since they are seeking monetary relief for the “social and emotional” harms that the Student suffered from not having her service dog at school—damages which are not available under the IDEA—they should not be required to first exhaust their administrative remedies. The transcript of the oral argument before the Court shows there may be some agreement among the justices that this is a case in which a family should not be required to go through administrative proceedings simply because they are seeking money damages. The decision in

this case, likewise, will extend far beyond this family’s case.

If you have a question about these issues, or involving any special education issue, please give your district’s attorney a call.

Best Practices for School Districts Regarding Public Participation at Board Meetings

by Staci L. Roberds

Under the Open Meeting Act, school board meetings are considered public meetings and are open to attendance by the public. Although the Act does not require school boards to allow the public to participate at meetings, many school boards designate a brief period of time during the meeting for participation by the public. However, because of the public nature of such participation and state and federal laws affecting the privacy of student and employee information and records, it is important for school districts to be aware of issues before they occur and to take certain precautions to limit potential violations of the law.

First, although school districts cannot prohibit one particular viewpoint of the public, i.e., allow positive comments but not negative, they can set limits on what subject matter may be discussed during the public participation portion of a board meeting. For example, districts may require that an individual wishing to speak during public participation advise the superintendent/board in writing prior to the meeting of the subject matter to be discussed.

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Districts may also require that the subject matter be included on the board's agenda in order for it to be discussed at the meeting. These steps will allow for a determination by the superintendent/board of whether the subject matter is appropriate for public participation, which will help ensure that students or employees privacy rights are not violated.

Second, districts may also require that the administrative process be exhausted prior to an issue being discussed in the public participation portion of a board meeting. For example, if a parent has an issue with a teacher, a district may require that the administrative process be followed before the parent is allowed to address the board members about any issues with the teacher. The same process would apply if a parent wanted to address an issue between students with the board during public participation. Similarly, with regard to general criticism of a district, a board may require that the individual discuss the criticism or comment at the appropriate administrative level prior to it being heard by the board.

Third, if individuals address the board during the public participation portion of the meeting, they should be advised not to identify by name or title specific students or employees. The board should also advise such individuals that the board members are there to listen, but will not answer questions or respond to any comments made during public participation. Following this procedure will allow for board members to avoid the potential disclosure of confidential information. Districts should also consider enforcing a time

limit per speaker and limiting participation to one speaker per group. For example, requiring that a spokesperson be identified to speak on behalf of a number of individuals with the same opinion on a subject will save time and allow for the board meeting to progress in an organized and efficient manner.

Finally, if a district has not already done so, it should strongly consider adopting a board policy explicitly addressing the public participation portion of a board meeting. Having a policy in place will provide the board with a process to follow during public participation and will advise the public prior to the meeting of their right to participate within the confines of the policy. If a school district has questions about public participation at a board meeting or needs assistance with developing a policy, it should contact its attorney.

Required Changes to Child Nutrition Procedures

by Michelle D. Siegfried

The USDA has revised its child nutrition requirements and extensive guidance on this topic was issued during the summer and fall of 2016. As a result, school districts are required to revise their policies on child nutrition related to student meal charges and collection efforts on delinquent accounts.

In addition to the required policy revision, there are also some practical issues school districts must address, including expanded record-keeping and publicity requirements. This revised policy must be "developed" with community involvement, but districts have considerable flexibility in determining the extent of the

districts are required to revise their policies on child nutrition related to student meal charges and collection efforts on delinquent accounts.

The 2017 legislative session has begun and the firm has compiled its annual tracking list of bills that are likely to impact Oklahoma schools. Hot topics this year include modification of the funding formula, mandatory 5 day school weeks, revising the teacher salary schedule, and caps on superintendent pay.

Please email Michelle (msiegfried@rflaw.com) if you would like access to the firm's legislative resources.

involvement. Accordingly, members of the firm suggest starting with the policy template and then soliciting input from the healthy and fit kids committee, posting on the website for comment, etc.

Your school district's revised policy must be in place by July 1, 2017. An appropriate policy template will be included with the 2017 policy packs but, due to timing, districts may order the policy now and receive a later credit on a 2017 policy pack.

Please contact Michelle (msiegfried@rflaw.com) to request the policy template.

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Our current education law fee schedule – which includes a significant price break for education clients - has been in place since 2013. Due to the economic pressures still impacting our schools, we have elected not to raise our education fees again this year.

We look forward to continuing to partner with you in public education!

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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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