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In this issue:

- 1 The Supreme Court's Ruling on What Constitutes A Free Appropriate Public Education for Special Education Students
- 2 Funding of School Improvements by Municipalities
- 3 Obligations of School District Employees for Reporting Child Abuse or Neglect
- 5 Implementing the Professional Learning Focus Component of the TLE

The Supreme Court's Ruling on What Constitutes A Free Appropriate Public Education for Special Education Students

by Cheryl A. Dixon

In January's Chalkboard I wrote about the case *Endrew F. v. Douglas County Sch. Dist.*, 580 U.S. ___, 2017 WL 1066260 (March 22, 2017), which was pending before the United States Supreme Court at that time. The Supreme Court issued its unanimous decision in the case on March 22, 2017. Oklahoma school districts need to be aware of the Court's decision and how it may affect individual education plans ("IEPs") written by IEP teams.

Endrew F. involved an autistic student from Colorado whose parents sued the local school district for private school tuition because the parents' claimed their student did not receive a "meaningful" education in the public school. The school district prevailed in the United States Court of Appeals for the Tenth Circuit (the appellate court that hears all appeals from federal courts in Oklahoma), which held that the district is required only to provide educational benefits that

are more than minimal or trivial. The issue for the Supreme Court was whether the standard to be applied in determining whether a student received a free appropriate public education ("FAPE") was whether the IEP, as written, was reasonably calculated to confer a meaningful educational benefit or some (de minimus) educational benefit.

The United States Supreme Court unanimously decided that the Tenth Circuit's standard for a FAPE, that an educational benefit that is merely more than a de minimus benefit, was too low. However, the Court declined to set a bright line test (i.e., adopt a standard of a "meaningful educational benefit") and stated that, "[t]he adequacy of an IEP turns on the unique circumstances of the child for whom it was created." Opinion at 15-16. Importantly, the Court held that to meet its substantive obligation under the IDEA, a school must offer an IEP

reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances. Opinion at 14-15.

The Court's decision has a detailed discussion of the case. However, what is most important for Oklahoma school districts to know is that when writing a student's IEP, each student's unique needs and circumstances must be considered by the IEP team. According to the Court, if a disabled student is fully integrated in a regular classroom, the Court will expect the IEP to meet the standard addressed in *Bd. of Ed. Hendrick Hudson Central School Dist., Westchester Cty. v. Rowley*, 458 U.S. 176, a case decided in 1982 which states that the IEP should be "reasonably calculated to enable the child to achieve passing marks and advance from grade to grade." If the student is not fully integrated in the regular classroom, however, the IEP must be written so that it is reasonably calculated to enable the student to make appropriate progress in light of the student's circumstances. The Court acknowledged that "[t]he 'reasonably calculated' qualification reflects a recognition that crafting an appropriate program of education requires a prospective judgment by school officials." This is a fact-intensive task and involves the expertise of the school and parents. The focus should be on the particular student and not globally on children with the same or similar disability.

If you have any questions about this issue, or any other special education issue, please contact your school district's attorney.

Funding of School Improvements by Municipalities

by Adam S. Breipohl

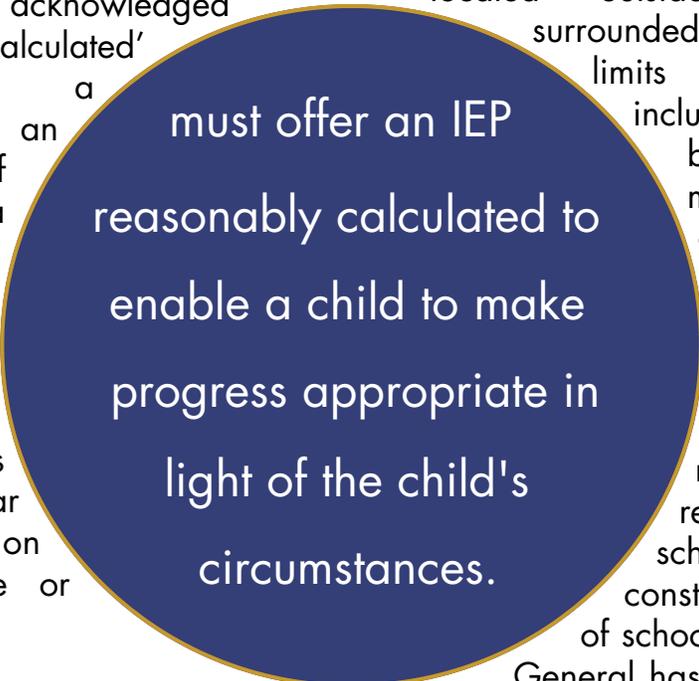
School districts that wish to undertake costly projects such as the construction of new school buildings should keep in mind that Oklahoma law authorizes collaborative financing arrangements with local municipalities, which could enable districts to make necessary improvements that they might not otherwise be able to fund in the current financial climate.

The relevant statute, OKLA. STAT. tit. 11, § 22-159, states:

"Municipalities may support any public school system located in whole or in part within the corporate limits of the municipality or any public school system located outside and completely surrounded by the corporate limits of the municipality, including without limitation by the expenditure of municipal revenues for construction or improvement of public school facilities."

The statute allows municipalities to use their revenue to support public schools, particularly the construction or improvement of school buildings. The Attorney

General has also clarified that under this statute, the support given to school districts does not have to be distributed among the districts located in the municipality in any particular way; a municipality could levy a sales tax for the purpose of supporting all public schools and distribute the funds



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equally among all school districts within its boundaries, or it could choose to distribute 70% of the revenue to one district and 30% to the other, or it could use all of the funds to support one particular district, as long as the municipality has a rational basis for the decision to distribute the revenue in the way it chooses. See 2005 OK AG 2.

School districts and municipalities have several options for how they can use this statute to finance construction of new buildings. One option involves a municipality entering into an agreement with a public trust that supports the municipality, under which (1) the public trust agrees to issue bonds to raise a certain amount of funds, (2) the municipality executes a sales tax agreement under which it agrees, subject to annual appropriation, to transfer sales tax revenue to the trust to repay its bonds, and (3) the public trust uses the funds it raised to construct a new building, which it then gifts to the school district.

If the transaction needs to be designed so the municipality does not assume the entire burden of paying for the new building, the deal could be modified so that instead of gifting the improved land to the school district, the public trust would agree to lease the land to the school district in a lease-purchase agreement that would allow the school district to pay for a portion of the cost of the new building over time by making lease payments, and then obtain title to the property when the term of the lease ends and the district's agreed share has been paid. While these are relatively complex transactions and it is beyond the scope of this article to fully explain how they would be

structured, these examples should give school districts a sense of the possibilities that are available.

Overall, Section 22-159 provides a way for school districts to fund necessary school improvements and for municipalities to invest in area public school districts to improve the long-term economic prospects for the area. School districts that are interested in pursuing school improvements with this type of financing arrangement should consider contacting their legal counsel.

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Obligations of School District Employees for Reporting Child Abuse or Neglect

by Staci L. Roberds

School districts and/or their employees may face situations where they suspect or learn of abusive or neglectful treatment of a student by an adult. This may involve suspected improper treatment of a student by a parent or guardian, or in some cases, it may involve suspected abuse of a student by a teacher, coach, or other school district employee. In the Oklahoma Children's Code, codified in the Oklahoma Statutes, the Oklahoma legislature has outlined the reporting requirements for suspected abuse, neglect, or exploitation of a child under the age of eighteen to the Oklahoma Department of Human Services ("DHS"). Moreover, many school districts have not only adopted their own policies outlining the statutory reporting requirements for child abuse and neglect, but

such policies often include additional requirements for school district employees.

The Oklahoma Children's Code, OKLA. STAT. tit. 10A, § 1-1-105, defines abuse to include harm or threatened harm to the health, safety, or welfare of a child to include, but is not limited to nonaccidental physical or mental injury, sexual abuse, or sexual exploitation by a person responsible for the child's health, safety and welfare. It has defined neglect to include the failure or omission by such person to provide a child with food, clothing, shelter, medical care, or protection from harm or threatened harm. Under the reporting requirements of OKLA. STAT. tit. 10A, § 1-2-101, school district employees, as well as other persons, have a legal obligation to immediately report abuse, neglect, or exploitation of a child under the age of eighteen to DHS if they have reason to believe such conduct is occurring. A reporting hotline has been established to make reports of suspected abuse or neglect to DHS. School district employees also should report the suspected abuse or neglect to local law enforcement.

Moreover, many school districts have adopted policies that require employees to report the suspected conduct to principals or other school officials regardless of whether the identity of the individual suspected of the improper conduct is known. Although not required under the reporting statute, most school districts require that an employee who suspects the mistreatment of a student over the age of eighteen notify principals or other school officials. School districts also may require that when reporting

suspected abuse or neglect to the DHS hotline, school employees request a report reference number in order to maintain a record of the report.

The reporting statute also provides that the legal obligation to report suspected abuse, neglect, or exploitation of a child is an individual obligation, and no employer may interfere with an individual employee's report to DHS. Thus, the school district cannot discriminate or retaliate against a person who in good faith reports suspected child abuse or neglect as required by the statute, nor can the school district discriminate or retaliate against a person who testifies in regard to such a report. In fact, Oklahoma law provides that a person who in good faith and exercising due care reports child abuse or neglect, allows access to a child for investigation of such a report, or participates in any judicial proceeding related to such a report, has immunity from civil or criminal liability. However, the reporting statute also provides that a person who knowingly and willfully fails to report suspected child abuse or neglect or interferes with the prompt reporting of the suspected conduct may be criminally liable for a misdemeanor. Further, if a person had knowledge of ongoing abuse or neglect of at least six months, i.e. prolonged knowledge, and knowingly and willfully failed to promptly report such knowledge, the person may be criminally liable for a felony.

School district officials and employees are encouraged to review the full text of the applicable reporting statute in the Oklahoma Children's Code, OKLA. STAT. tit. 10A, § 1-2-101, as well as any board policy a school

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district may have on child abuse and neglect. If a school district has questions about the statutory reporting requirements or needs assistance with a policy, it should contact its attorney for further guidance.

Implementing the Professional Learning Focus Component of the TLE

by N. Roxane Gebhart

The Oklahoma State Department of Education ("OSDE") will begin requiring school districts to pilot a new professional development program within the Oklahoma Teacher and Leader Effectiveness Evaluation System (the "TLE") during the 2017-18 school year. Recent legislative changes to the TLE process via Oklahoma's House Bill 2957 provided the catalyst in adding a new component to the TLE known as the Professional Learning Focus ("PL Focus") component. The PL Focus component is based on each teacher or administrator's qualitative evaluation. The basic premise of the PL Focus is to establish an annual professional learning focus for the TLE participant that is developed by the teacher or administrator in collaboration with his or her TLE evaluator. The PL Focus component is aimed at supporting the constant learning and growth of all educators.

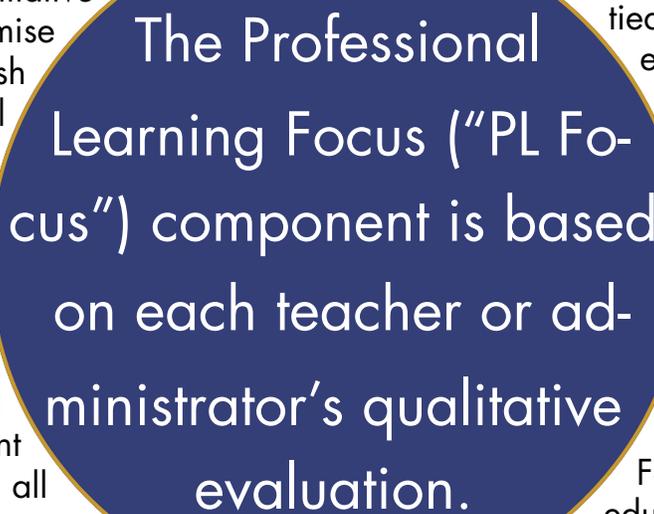
School districts are required to pilot the PL Focus component of the TLE during the 2017-18 school year. School districts have wide discretion in their piloting of the PL Focus component, as school districts may have as few as twenty-five percent of certified teachers or as

many as the school district's entire professional staff participating in the piloting of the PL Focus component of the TLE. By the 2018-19 school year, school districts are required to have the PL Focus component of the TLE fully implemented. Full implementation means that every individual subject to a TLE evaluation must participate in the PL Focus component every school year regardless of exemption status.

In order to pilot and implement the PL Focus component, school districts should have their building leaders introduce the PL Focus concept to participating teachers and administrators that are subject to the TLE at the beginning of each school year. During the first quarter of the school year, the participant should select and establish a PL Focus goal collaboratively with his or her TLE evaluator. Once a PL Focus goal has been selected and established, school districts should document the participant's PL Focus goal. The OSDE recommends that school districts document the participant's intended PL Focus goal by using a consistent form.

The participant's goal must be tied to a TLE indicator or element appropriate to that particular individual. The goal does not need to relate to an area of weakness and can be modified in writing during the year.

The participant should accomplish his or her PL Focus goal by receiving education and training related to the participant's identified area of focus by attending related meetings, webinars, graduate school classes, professional reading, etc. School districts are responsible for monitoring the participant's compliance with his or her identified PL Focus goal. The participant's evaluator must individually check the participant's progress on his or her PL Focus



The Professional Learning Focus ("PL Focus") component is based on each teacher or administrator's qualitative evaluation.

progress at least once during the school year; however, the OSDE prefers that PL Focus progress be checked by the evaluator twice during the school year. These progress meetings can be done in connection with TLE observation reviews to reduce scheduling concerns.

During the participant's end of the year TLE evaluation, the participant's PL Focus goal documentation and any evidence of completion of the goal must be attached to the participant's evaluation form. For those participants not being evaluated that year because of being in a TLE evaluation exempt status, school districts should include the participant's PL Focus goal documentation and any evidence of completion in the participant's personnel file. From a practical standpoint the participant's completion of his or her PL Focus goal is a pass or fail activity as there are no associated TLE ratings for the PL Focus component.

Additionally, there is no minimum amount of time required by the TLE for the participant to spend working towards completion of his or her

PL Focus goal. PL Focus work can be done during the participant's regular contract day, but PL Focus work may also be completed outside of the participant's contract day. Entire departments or buildings with a School District can all choose the same focus area and building principals can devote time during meetings to professional development for everyone. However, participants cannot be required to participate in a pre-prescribed PL Focus area. Participants must be able to choose their own PL Focus goal.

Each school district's board of education must approve a policy requiring the use of the PL Focus component as a part of the evaluation process. RFR's 2016 policy packs included the required changes, although additional revisions may be needed at the conclusion of the 2017 legislative session. Please contact Michelle Siegfried (msiegfried@rfrlaw.com) if your district needs assistance with this policy language.

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Chalkboard is a Rosenstien, 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 Rosenstien, 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: Rosenstien, 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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