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In this issue:

- 1 Important Amendments to the Oklahoma Employment Security Act
- 2 Automatic Renewal Provisions in Contracts
- 3 OSER's Clarification on Secondary Transition
- 4 2014 Fall School Law Update and Golf Tournament

Important Amendments to the Oklahoma Employment Security Act

by Staci L. Roberds

A school district, like other employers, may face unemployment claims by former employees. Section 2-406 of Title 40 of the Oklahoma Statutes addresses discharge for misconduct and its effect on unemployment benefits. In the past, the Oklahoma Employment Security Act did not include a definition of misconduct nor did it explain an employer's burden of proof to show that an employee engaged in misconduct. In November 2013, the legislature amended the Act to include examples of misconduct and explain an employer's burden of proof. On November 1, 2014, additional amendments to the Act will become effective.

The amendments effective on November 1, 2014, change the definition of misconduct as included in the prior amendment. The 2013 amendment defined misconduct, but it did not limit it to the

definition contained in the statute. In Subsection B of the new amendments to the statute, misconduct is limited to the definition contained in the statute, which defines misconduct in the following respects: 1) any intentional act or omission by an employee which constitutes a material or substantial breach of the employee's job duties or responsibilities or obligations pursuant to his or her employment or contract of employment; 2) unapproved or excessive absenteeism or tardiness; 3) indifference to, breach of, or neglect of the duties required which result in a material or substantial breach of the employee's job duties or responsibilities; 4) actions or omissions that place in jeopardy the health, life, or property of self or others; 5) dishonesty; 6) wrongdoing; 7) violation of a law; or 8) a violation of a policy or rule enacted to ensure orderly and proper job performance or for the safety of self or others.

The new amendments do not change the legislature's prior explanation of an employer's burden of proof for establishing misconduct, which is addressed in Subsection A of the statute. An employer, or its designated representative, satisfies its burden of showing that an employee engaged in misconduct by providing a signed affidavit or presenting other evidence demonstrating that the discharge of the employee was because of the misconduct. Once an employer meets its burden, the burden shifts to the employee to prove the employer's facts are incorrect or do not satisfy the definition of misconduct contained in the statute.

Moreover, the statute also contains two new provisions, included in Subsections C and D. Subsection C of the statute provides that discharge for misconduct as defined in Subsection B does not require a prior warning by the employer. If the employee "knew, or should have reasonably known," he was violating an employer's rule or policy, the employee is ineligible for unemployment benefits. Subsection D provides that a finding by a state or federal agency that an employee failed to meet "the applicable civil, criminal, or professional standards of the employee's profession" will create a "rebuttable presumption of such misconduct," resulting in a denial of benefits, unless the employee shows by clear and convincing evidence the misconduct did not occur or it is determined the conduct does not constitute misconduct as defined by Subsection B.

When evaluating unemployment claims, school districts should pay close attention to the definition of misconduct, the burden of proof, and the new subsections included in the upcoming amendments to the Oklahoma Employment Security Act. If questions arise, a district should consult with its attorney.

Automatic Renewal Provisions in Contracts

by Kelsey K. Bardwell

It is well-known among school administrations that public school districts cannot obligate district funds in a future fiscal year. Often, vendors who enter into contracts for services with school districts will include an automatic renewal provision into the written agreement, in order to avoid the requirement of renewing the agreement for the following fiscal year. However, such provisions are contrary to Oklahoma law.

If the employee "knew, or should have reasonably known," he was violating an employer's rule or policy, the employee is ineligible for unemployment benefits.

Public school districts are subdivisions of the State of Oklahoma, and pursuant to Article 10 § 26 the Oklahoma Constitution,

no county, city, town, township, school district, or other political corporation, or subdivision of the state, shall be allowed to become indebted, in any manner, or for any purpose to an amount exceeding, in any year, the income and revenue provided for such year without

the assent of three-fifths of the voters thereof....

See OKLA. STAT. tit. 65 § 1-103 *et seq.* and OKLA. CONST. art. 10 § 26 (a).

Any agreement that automatically renews for a term beyond the current fiscal year without the affirmative action of the governing body would constitute an illegal obligation in violation of constitutional debt limits. The Oklahoma Attorney General has determined that clauses which provide that a contract is to extend beyond the then current fiscal year, although subject to termination on non-appropriation of funds, are inconsistent with the laws of the State of Oklahoma and are thus, void. 1978 OK AG 256.

Notice that even though the contract is "subject to termination on non-appropriation of funds," the contract is considered "void."

A better alternative is to specify that the contract ends on the last date of the current fiscal year (June 30) and is subject to annual renewal upon mutual written agreement of the parties. In this way, the contract can be renewed by an affirmative vote of the board of education for the upcoming fiscal year in compliance with the law. If you would like additional information on this subject, please contact your school district attorney.

OSER's Clarification on Secondary Transition

by Cheryl A. Dixon

Under the Individuals with Disabilities Education Act (IDEA), its implementing regulations, and Oklahoma policy, the IEP for each student with a disability must include annual secondary transition services that are in effect no later than the beginning of the student's ninth grade year or upon turning 16 years of age, whichever comes first, or younger if determined appropriate by the IEP Team. The IEP must include (1) appropriate measurable postsecondary goals based upon age-appropriate transition assessments related to training, education, employment and, where appropriate, independent living skills; and (2) the transitions services needed to assist the child in reaching those goals. Since publication of the IDEA's implementing regulations, the Office of Special Education and Rehabilitative Services in the U.S. Department of Education (OSERS) has received requests for clarification of some of these regulations. In response to these requests for clarification, OSERS published a question and answer (Q&A) document to provide information regarding secondary transition for students with disabilities.

One of the several issues addressed in the Q&A is whether an IEP must include measurable postsecondary goals in each of the areas of training, education,

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2014 Fall School Law Update and Golf Tournament

Date - Wednesday, October 8, 2014

SCHEDULE	
8:30 a.m.	Registration
9:00 a.m. – 11:00 a.m.	School Law Update
11:00 a.m. – 12:00p.m.	Lunch (provided) and Practice Time
12:15p.m.	Golf – Shotgun Start
5:00 p.m.	Awards Presentation

Cost: Seminar Registration Fee – \$50 per person (first-come first-serve).
Note – This seminar is limited to the first 120 registrants – Please register early (we will confirm every registrant via e-mail)

Where: White Hawk Golf Club, 14515 S. Yale Ave., Bixby, OK

Seminar Format: 2 hour update on school law related issues and relevant topics designed to provide you with new insight and direction.

Golf Format: 4 person scramble – no charge for seminar attendees
 All participants will receive a complimentary Nike® golf shirt (women's sizes available)

Deadline to Register – Friday, October 3

Contact Info: Phone: 918-585-9211 or 1-800-767-5291
 Questions: Contact Jim Hoffmeister
 Email: jimh@rfrlaw.com

Mail, Fax or E-mail this Registration Form to:
 Rosenstein, Fist & Ringold
 525 S. Main, Suite 700
 Tulsa, Oklahoma 74103
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 E-mail: jimh@rfrlaw.com

If you list more than one person on your registration form, please contact them prior to submission of this form. If the person is with another school district, we will bill them directly.

**Registration Deadline:
Friday, October 3**

There is still room available at the seminar and in the golf event!

The Oklahoma State Department of Education and the Oklahoma Department of Career and Technical Education have approved the seminar for 2 hours of board member credit for Legal Issues Impacting Local School Districts or Continuing Education.

To register please go to:
www.rfrlaw.com and click on the link under *In The News*

9:00 to 10:00 a.m. Session

Topic: School District Relationships with Law Enforcement Agencies
Speaker: Matt Cyran, Shareholder RFR

This session will address the relationships between local, state and federal law enforcement agencies and public school districts. Topics will include explanations of the various law enforcement agencies districts are likely to have contact with, how those agencies are organized and how they function. We will discuss strategies for successful dealings with law enforcement when there are sometimes competing interests of both public safety and student privacy. Other discussions will include recent issues some districts have dealt with regarding search warrants and state privacy statutes.

10:00 to 11:00 a.m. Session

Emerging Legal Issues for Administrators
Speaker: Karen Long, Shareholder RFR

- Attorney in Fact: A New Form of School Choice – Common and not so Common Questions
- OSSAA Rule Changes and School Sports – Do they Effect Schools?
- Emails, Texts – Private or Public and Does it Matter?

This session will explore three different topics all involving new or developing areas that will challenge and maybe even confound administrators this year. The topics include a discussion of HB 2536 and its provision for school admission based upon an "attorney in fact" affidavit, and the changing look of residency as related to school enrollment. OSSAA experienced a difficult legislative session and in the end faced the necessity of adopting rule changes. It is helpful for school administrators to understand the effect of the changes on schools. It is no surprise that emails, texts and other forms of digital communication are here to stay but the surprise may well be that many exchanges are public records and even if not public records are records subject to being produced in litigation. Understanding when digital communications become public records and possibly front page news and when they remain personal, private property is key to avoiding the pitfalls of living large in the digital age.

employment, and independent living skills, and if there are any circumstances in which goals for training and education can be combined. In response, OSERS stated that the areas of training and education can reasonably be interpreted as overlapping in certain instances:

In determining whether postsecondary goals in the areas of training and education overlap, the IEP Team must consider the unique needs of each individual student with a disability, in light of his or her plans after leaving high school. If the IEP Team determines that separate postsecondary goals in the areas of training and education would not result in the need for distinct skills for the student after leaving high school, the IEP Team can combine the training and education goals of the student into

one or more postsecondary goals addressing those areas.

Thus, if determined appropriate by the IEP Team, in some instances it would be permissible for the IEP to include a combined postsecondary goal or goals in the areas of training and education to address a student's postsecondary plans. On the other hand, OSERS stated that because employment is a distinct activity from the areas related to training and education, each student's IEP must include a separate postsecondary goal in the area of employment.

If you have any questions about Secondary Transition please contact your school district's attorney. The complete Q&A document can be found at <http://idea.ed.gov/explore/view/p/,root,dynamic,QaCorner,10>.

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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.