Chalkboard

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Recent Amendments to Oklahoma Statute Addressing Sports-Related Head Injuries

by Staci L. Roberds

Recent amendments to OKLA. STAT. tit. 70, § 24-155 include more explicit requirements for the State Department of Health with regard to its website, which is utilized by school districts and other youth sports organizations or associations for the development of policies and procedures regarding concussions or other sports-related head injuries and for the training of game and team officials. The amendments continue to require that school districts: (i) provide student athletes and their parents or guardians information about concussions and other sports-related head injuries and (ii) maintain an "acknowledgement and understanding of the information" from the athlete and parent or guardian. The amendments became effective on November 1, 2016.

Section A of the amendments includes a definition of "athlete" and "health care provider." An "athlete" is defined as "a secondary-school-age individual who is participating in a sport which is individual – and/or team-based, outside of school or within school and either competitive or in an organized practice." A "health care provider" is defined as "an individual who is registered, certified, licensed or otherwise recognized by the state to provide medical or psychological treatment and who is trained and experienced in the evaluation, management and care of concussions."

Section B of the amendments requires that the State Department of Health's website include a concussion management section to provide school districts' boards of education and youth sports organizations the necessary guidelines to develop the policies and procedures mandated under Section C of the amendments to educate coaches, game officials, team officials, athletes and their parents or guardians about the potential risk of a concussion or head injury and an athlete's continuance of play after suffering such an injury. The Department of Health must include the following information on its website: (i) a concussion and head injury information sheet detailing the signs and symptoms of a

concussion or head injury and the risk of practicing or competing in an athletic event after sustaining such an injury; (ii) guidelines for teachers and other school personnel for "return to learn" athletes who return to the classroom after suffering a concussion or head injury; (iii) guidelines for team officials regarding "graduated stepwise return to athletic participation" pertaining to those athletes who return to practice or competition after suffering a concussion or head injury; and (iv) links to various free online concussion training programs provided by the Centers for Disease Control and Prevention, the National Federation of State High School Associations, or some other approved program.

The amendments also re-word the language of Section C, which previously required that the athlete and the athlete's parent or guardian complete a concussion and head injury information sheet and return it to the school district prior to the athlete's participation in practice or competition. The current language requires that the school district or the youth sports organization or association disseminate information about concussions and head injuries on an annual basis to the athlete and his or her parent or guardian and that the athlete and the athlete's parent or guardian complete an "acknowledgment and understanding of the information" and that this "acknowledgement and understanding" be maintained by the school district or the youth sports organization or association. **Thus, some sort of verification of receipt by the athlete and his or her parent or guardian of information regarding concussions and head injuries is still required and must be maintained by the school district.**

Section C further requires: (i) that game officials and team officials undergo certain concussion training on an annual basis and that a record of completion of such training be kept and be made available for review upon request; (ii) that if any game official or team official responsible for the care and safety of an athlete becomes aware of or suspects that an athlete is exhibiting signs or symptoms of a concussion or head injury, he or she will remove the athlete from the practice or competition; (iii) that if the athlete is removed from the practice or competition, the athlete will not be permitted to return to the practice or competition on the same day he is removed; and (iv) that if the athlete is removed from the practice or competition, the athlete will not be allowed to participate in any other practice or competition until the athlete is evaluated by a health care provider and receives clearance to return to practice or competition. The amendments provide that any health care provider, game official, team official, or volunteer cannot be liable for any civil damages related to the injury, death or loss to a person or property related to their act or omission, unless such act or omission constitutes gross negligence or willful or wanton misconduct.

Section D sets forth the minimum penalties associated with violations of Section C by game officials and team officials with regard to their responsibilities for the care and safety of an athlete when they become aware or suspect that an athlete has suffered a concussion or other head injury. An official's first violation requires additional training as predetermined by the governing board. A second violation requires suspension from the sport until an appearance before the governing board. Section D further provides that monetary fines must not be considered as a penalty.

Section E merely states that the State Department of Health must promulgate the necessary rules to implement the amendments.

School districts should pay close attention to all the foregoing amendments involving sports -related head injuries of student athletes, but

especially to the requirements that the athletes and their parents or guardians provide "acknowledgment and understanding" of the information disseminated to them by the school district, and the requirement that the school district maintain a record of the "acknowledgment and understanding." If questions arise, a district should not hesitate to consult with its attorney.

Federal Court Issues Preliminary Injunction Barring Enforcement of New Overtime Rules

by Jerry A. Richardson

On November 22, 2016, a federal court in Texas issued a preliminary injunction prohibiting the United States Department of Labor from enforcing a new final rule that would have doubled the minimum salary threshold for employees to qualify for exemption from the overtime requirements of the Fair Labor Standards Act. Under the new final rule that was scheduled to go into effect on December 1, 2016, the minimum salary for exempt employees employed in an "executive, administrative, or professional capacity" would have increased from $455 per week ($23,660 annually) to $921 per week ($47,892 annually). The Department of Labor estimated that the new rule would have expanded overtime coverage to approximately five (5) million employees who are currently exempt.

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In September of 2016, 21 states, including Oklahoma, filed a lawsuit seeking to enjoin the implementation of the Department of Labor's new rule. The states' lawsuit was later consolidated with a similar lawsuit filed by the United States Chamber of Commerce and a number of other business groups. The states and business groups argued that the new final rule would dramatically increase labor costs, and they contended that the Department of Labor had exceeded its authority by raising the minimum salary threshold so high and providing for future automatic adjustments every three (3) years.

The purpose of a preliminary injunction is to maintain the status quo until the court makes a final decision as to the Department of Labor's authority to make the final rule and the final rule's validity. Thus, the preliminary injunction does not mean that the new final rule will never go into effect. It does mean, however, that the previously-existing overtime rules will remain in effect until the court issues a final decision or an appellate court overturns the decision. The court made the injunction effective nationwide to ensure that all employers and employees are subject to the same overtime requirements regardless of the state in which they are located.

The Department of Labor has filed an appeal of the order granting the preliminary injunction.

School Districts that have not yet taken actions to raise exempt employees' salaries or reclassify exempt employees as non-exempt need not take any action at this point.

If your School District has already acted in anticipation of the new final rule going into effect on December 1, 2016, it would be prudent to contact your School District attorney for guidance in dealing with this situation.

ESSA and the Educational Stability of Foster Children

by Cheryl A. Dixon

In recent years, states and the federal government have launched efforts to increase the educational stability of children in foster care and improve educational outcomes for these students. In 2008, Congress amended the Social Security Act with the Fostering Connections to Success and Increasing Adoptions Act. The Fostering Connections Act requires state child welfare agencies to ensure that children in foster care who change schools are promptly enrolled in a new school with the relevant school records. The Every Student Succeeds Act of 2015 ("ESSA") followed the lead of the Fostering Connections Act and required state educational agencies ("SEAs") and local education agencies ("LEAs") to work with child welfare agencies to ensure the educational stability of children in foster care. The educational stability requirements become effective December 10, 2016.

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Under ESSA, state plans must describe, among other items, the steps an SEA will take to ensure collaboration with the state agency responsible for administering state plans under the Social Security Act to ensure the educational stability of children in foster care, including assurances that:

- any such child enrolls or remains in his or her school of origin, unless it is determined that it is not in the child's best interest to attend that school, which decision shall be based on all factors relating to the child's best interest, including consideration of the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement;
- when a determination is made that it is not in the child's best interest to remain in the school of origin, the child is immediately enrolled in a new school, even if the child is unable to produce records normally required for enrollment;
- the enrolling school shall immediately contact the school last attended by any such child to obtain relevant academic and other records; and
- the SEA will designate an employee to serve as a point of contact for child welfare agencies and to oversee implementation of the SEA's responsibilities.

In addition, LEAs must develop and implement clear written procedures governing how transportation to maintain children in foster care in their school of origin, when in their best interest, will be provided, arranged,

and funded for the duration of the student's time in foster care. LEAs must ensure that children in foster care needing transportation to the school of origin will promptly receive transportation in a cost-effective manner. The U.S. Departments of Education and Health and Human Service have issued non-regulatory guidance which advises LEAs to consider whether transportation can be provided for minimal or no additional costs and suggests that LEAs and local child welfare agencies explore whether a foster child is already eligible for transportation covered by other programs. For example, whether IDEA funds may be used to pay for transportation services if the child's IEP team determines transportation is a related service that is required in order for a child with disabilities in foster care to receive a free appropriate public education.

Furthermore, the Departments' non-regulatory guidance explains that a point of contact with a child welfare agency may be helpful for facilitating the transfer of records for foster children, including Section 504 plans and copies of IEPs, but SEAs and LEAs must comply with all statutory requirements to protect student privacy, including FERPA and any other privacy requirements under federal, state, or local laws. *See Non-Regulatory Guidance: Ensuring Educational Stability for Children in Foster Care* (ED/HHS 06/23/16).

Finally, the Oklahoma State Department of Education, Office of Federal Programs, sent out on Tuesday, November 22, 2016, the state's Foster Care State Plan and issued guidance to assist LEAs in Oklahoma in meeting their obligations under the ESSA. If your District has any questions about this or any other issue, please contact your School District's attorney.

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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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