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Contract Services and Fiscal Year Limitations

by N. Roxane Mock

Many school districts enter into contracts with service providers for services such as copy machine licenses, trash services, and uniform rentals and cleaning. Unfortunately, service provider contracts are frequently drafted to benefit the service provider and often contain several provisions that are one-sided pertaining to the service provider's performance deficiencies and the contract's automatic renewal and termination. School districts should be mindful of such terms when entering into contracts with service providers in order to avoid costly future disputes as well as possible violations of Oklahoma law.

Most service contracts contain provisions regarding a school district's rights when a service provider has failed to perform or had serious deficiencies with

its performance. Typically, service contracts allow for the service provider to have an opportunity to correct its performance. Such a term usually requires that a school district give the service provider written notice of the provider's performance deficiencies so that the provider can then have an opportunity to correct the deficiency. Service contracts that offer providers with an opportunity to correct any performance deficiencies usually contain provisions that penalize school districts for terminating a service contract without issuing the service provider notice of performance deficiencies and allowing the provider an opportunity to correct the deficiency. These penalty provisions often contain a term allowing for a service provider to demand

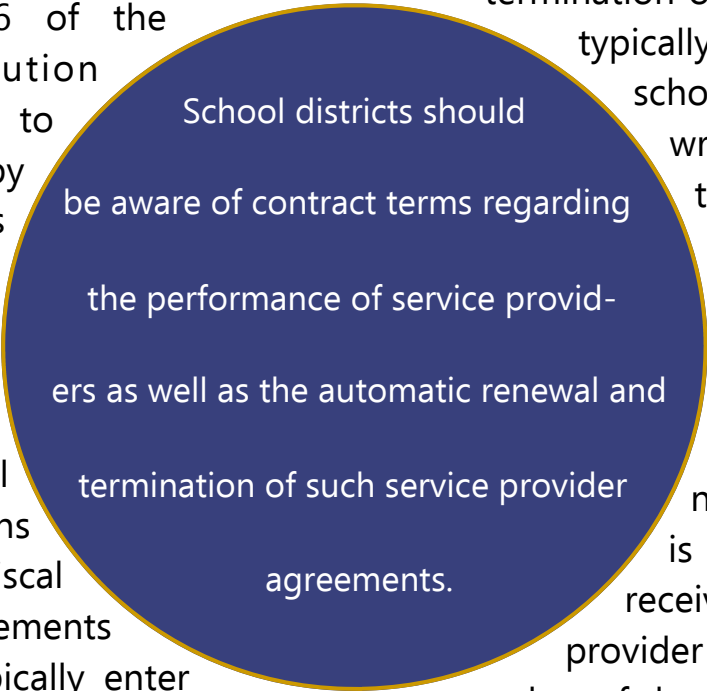
and collect liquidated damages from a school district. Liquidated damages are usually extremely costly and typically force school districts to continue the service contract.

Article 10, Section 26 of the Oklahoma Constitution requires school districts to operate on cash basis by fiscal year, which runs from July 1 to June 30. In other words, Oklahoma school districts are prohibited from binding the school district to obligations occurring in a future fiscal year. Many service agreements that school districts typically enter into include a contract term that binds a school district's funds into a future fiscal year. In order for a school district to continue its service agreement with a provider from one fiscal year to the next, the school district's board of education must vote to enter into the service agreement at the beginning of the new fiscal year. Only a school district's board of education can legally bind a school district to a contract by a vote of a majority of the board members at a duly scheduled public meeting pursuant to an appropriate agenda item.

Additionally, service contracts often contain automatic renewal terms. Setting aside the fact that any automatic renewal term extending into a future fiscal year violates Oklahoma law, school districts must be

aware that such automatic renewal terms typically require that a school district provide the service provider with written notice of the school district's intent to terminate the service contract. The termination of a service agreement typically requires that a school district provide written notice of termination to a specific individual and via a particular delivery method. Moreover, a school district's written notice of termination is often required to be received by the service provider within a specific number of days prior to the contract expiration or renewal date.

School districts should be aware of contract terms regarding the performance of service providers as well as the automatic renewal and termination of such service provider agreements. Service provider contracts are often drafted for the benefit of the service provider by including one-sided contract terms. School district should carefully review service agreements for terms that are one-sided and that bind future fiscal year funds prior to entering into a service agreement. If you have any questions regarding service provider contracts, please contact your school district's attorney.



Chronic Absenteeism: Medical Exemption

by Haley A. Drusen

As you are likely aware, the Oklahoma State Department of Education is revamping its accountability system for K-12 education. In order to comply with 2016 and 2017 legislation, a new category of accountability is being added for all school sites—Chronic Absenteeism. This category is a non-academic indicator of student success and school quality under the Every Student Succeeds Act. Under the 90 point A-F accountability system, Chronic Absenteeism is worth 10 points—or eleven percent (11%). Schools will receive scores based on the number of students enrolled that are not chronically absent.

Chronic Absenteeism is defined as missing ten percent (10%) or more of the school year and will be calculated based on students enrolled on or before January 2. For districts on a 180 day calendar, a student enrolled for the full school year would be considered chronically absent when he or she has missed 18 days—which would amount to roughly two absences per month. However, this time could be significantly shorter for students that attend only part of the school year.

Although participation in school activities is not an absence, chronic absenteeism generally will be measured on whether or not the student is present—regardless of whether

the absence is excused or unexcused. However, the 2017 legislation authorizing this new performance indicator allowed for a medical exemption to these reporting requirements and mandated that the Oklahoma Department of Education promulgate rules regarding this exception. On March 28, 2018, Governor Fallin approved an emergency rule for the Department of Education that outlines when schools may request “an exemption from the school’s chronic absenteeism indicator” for certain absences of students who meet the definition of having a “significant medical condition.” Additionally, a student on an Individualized Education Program (IEP) or a Section 504 Plan is considered in attendance and does not accrue absences while receiving offsite services addressed in his or her IEP or Section 504 Plan.

Under the new rule, a “significant medical condition” is “a severe, chronic, or life-threatening physical or mental illness, infection, injury, disease, or emotional trauma” that meets certain listed characteristics. This definition will *not* generally include “short term illness or injuries resulting in absences of ten (10) or fewer consecutive instructional days,” pregnancy, or minor illnesses that do not incapacitate the student. This definition may include, but is not limited to, a student who has been placed in hospice care, absences related to a “serious chronic medical condition,” or a death or life-threatening injury of a student’s immediate family member.

If a school is successful in gaining an exemption, absences related to the medical exception will not be including in the calculation of the chronic absenteeism indicator. However, if a school's application is denied by the State Department of Education, the school may appeal that decision to the State Board of Education in accordance with procedures outlined in the new rule.

While the medical exemption rule had emergency approval and is in effect, other proposed rules from the State Department of Education are currently pending before the legislature. These proposed rules include a new certification category (Speech Language Pathology Assistant), the adjustment of the validity period for new provisional teaching certificates issued to qualifying paraprofessionals, modifications related to years of teaching service under the minimum salary schedule for active duty military and certain SoonerStart teachers, and waiver options for graduation requirements for certain transfer students. If approved by the legislature, these rules will be effective in September 2018.

As a reminder, RFR Red Banner Updates and other legislative services are provided at no charge to clients of the firm. Please sign up via our website or email Haley Drusen, hdrusen@rflaw.com, to request access.

Personal Business Leave for School District Employees

by Staci L. Roberds

Oklahoma law provides that all teachers and support employees are entitled to a minimum of three (3) days of personal business leave. A "teacher" is defined under the Oklahoma statutes as "any person who is employed to serve as district superintendent, principal, supervisor, a counselor, librarian, school nurse or classroom teacher or in any other instructional, supervisory or administrative capacity" and holds a valid certificate to perform those services for which the person is employed. A "support employee" is defined under the Oklahoma statutes as an employee who is employed by a school district: (i) on a full-time basis (full-time status is determined by the standard period of labor which is customarily understood to constitute full-time employment for the type of services performed by the employee); (ii) for a minimum of 172 days; and (iii) for services that are necessary for the efficient and satisfactory functioning of a school district and cannot include services that are performed by professional educators or licensed teachers. Thus, all full-time certified personnel and those employees who meet the statutory defini-

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tion of a support employee (hereinafter collectively referred to as "school district employees") are entitled to three (3) days of personal business leave.

In addition to providing for a minimum amount of personal business leave, statutory law provides that a school district may deduct the cost for a substitute teacher from the salary of a teacher who utilizes personal business leave, but any salary deduction by the school district shall not exceed the cost of the substitute. Similarly, a school district may deduct the cost of services provided to the district by a support employee for the use of personal business leave, but the salary deduction shall not exceed the salary of the support employee. Moreover, the statute does not preclude a local school district's board of education from adopting policies for personal business leave that exceed the minimum requirements set forth in the statute. However, the statute provides that personal business leave for support employees shall not exceed the benefits authorized for teachers. Further, personal business leave cannot be carried over by a school district employee from one school year to the next, nor can it be converted to sick leave and carried over.

Oklahoma law does not expressly define the types of activities that constitute personal business leave. It is the responsibility of a school district's board of education to determine what types of activities do or do not qualify for the use of personal business leave by a school district employee. Per-

sonal business leave policies may limit personal business leave to matters that cannot be conducted after school hours or over the weekend. Such policies may also require that a school district employee request personal business leave in advance of the date it is needed. A school district's leave policy may provide examples of activities that typically qualify as personal business leave, while also providing examples of specific activities that do not qualify. For example, personal business leave could include: (i) the illness of a family member outside immediate family, (ii) business transactions, such as loan closings and banking matters, (iii) legal matters, such as meeting with an attorney for personal, spouse, or children's business, (iv) court appearances, (v) settling of estates, and (vi) other miscellaneous reasons, such as attending a business convention with one's spouse. Examples of activities that would not be approved as personal business leave could include: (i) pleasure trips or vacations, (ii) attending school activities or sporting events, (iii) seeking other employment, (iv) participating in political or social activities, and (v) performing services for compensation.

In light of the statutory requirements for personal business leave, a school district should pay close attention to its personal business leave policy to ensure it meets the minimum statutory requirements. Moreover, a school district's policy should provide examples or guidelines of what types of activities may qualify as personal busi-

ness leave and what types of activities will not qualify. Further, a school district should make those school district employees entitled to personal business leave aware of its policy to avoid conflicts over the use of such leave. For example, a school district could include the policy in the employee handbook or provide a copy of the handbook to the employee when hired.

If a school district has any questions about personal business leave or any other type of leave utilized by a school district employee, the school district should consult with its attorney.

Field Trips and Students with Special Needs

by Cheryl A. Dixon

This is the time of year that questions regarding the participation of students with special needs in field trips will most commonly arise. There may be situations where it does not initially seem appropriate for a student to attend a field trip, such as a student with autism who has separation anxiety and has not spent the night away from her parents attending an overnight trip out of

town, or a student with mobility issues going on a field trip to a location that will make mobility difficult. Regardless of the District's concerns about a student's involvement in a field trip, school officials have to work with parents to address the topic of field trips and provide accommodations that will permit the student to participate as appropriate.

If there are specific factors that may make a particular field trip problematic for a student, an IEP meeting should be scheduled to discuss such concerns with the parents. It is important for school officials to approach the meeting with a problem-solving attitude so the parents don't presume their student will be automatically excluded from the field trip. At this meeting review accommodations already afforded to the student in her IEP and consider which may be appropriate supports for a particular field trip. Seek input from

the parents on accommodations that may be necessary, as well as how the student can be prepared for the field trip, and for a contingency plan if an emergency occurs during the field trip. Be sure to document all the decisions reached as well as any additional accommodations that are agreed to and why in an IEP amendment or Written Notice.

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Red Banner Updates

RFR Red Banner Updates provide concise overviews of new laws impacting public education, and the first updates of 2018 have been added to the client only section of the firm's website.

Please email Bernadette Young (byoung@rfrlaw.com) if you need to access or update your information.

Field trips are an important part of the school experience, and students with disabilities should be encouraged to participate. If a parent seems reluctant to grant permission for the student to go on a field trip, but the other members of the IEP Team believe the student would do well, try emphasizing that the trip will give the student a chance to work on some of her IEP goals – whether academic, social or behavioral. Let the parent know you will discuss any concerns with the appropriate individuals where the field trip will be held beforehand and work with the venue on educating appropri-

ate staff on the student's disability and the agreed accommodations. Likewise, if a particular field trip would not be appropriate for a specific student, honestly and openly discuss the issue with the parents and how accommodations would not assist in making the field trip successful for the student.

In addition, questions regarding field trips also arise in connection with students covered by § 504 or the Americans with Disabilities Act. If you have a question as to these issues, or any other special education issue, please contact your school district's attorney.

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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.

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