

# Chalkboard



An Education Newsletter from the Attorneys of Rosenstein, Fist & Ringold

2018 Issue 5

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## New Administrative Rules Effective in September

by Haley A. Drusen

Starting September 14, 2018, several changes to OSDE's administrative rules will be effective. Eleven rule changes were approved by Governor's Declaration on June 18, 2018. While some of these changes were relatively minor changes in terminology, other changes are more substantial and may affect school district operations. Each rule change is summarized briefly below:

### **Speech Language Pathology Assistants: OKLA. ADMIN. CODE 210:20-9-172:**

The first new rule change outlines a new area of subject matter competency for certification. Under this regulation, the Oklahoma Commission for Education

Quality and Accountability will develop a subject matter exam for Speech-Language Pathologist Assistants. This will allow qualified individuals to become eligible for certification as Speech-Language Pathology Assistants in Oklahoma.

### **Paraprofessional Teaching Certificates: OKLA. ADMIN. CODE 210:20-9-102:**

This rule change adjusts the validity period for provisional teaching certificates issued to certain paraprofessionals. This rule now provides that new provisional teaching certificates issued to these paraprofessionals will be valid for three years. Under prior provisions, these paraprofessionals had to



annually renew their provisional teaching certificate.

**Teaching Experience Calculation: OKLA. ADMIN. CODE 210:25-3-4:**

This rule change adds two new provisions addressing calculation of teaching experience for certain employees.

The first change clarifies that teachers who are called to active duty in the uniformed services are entitled to accrue experience during their deployment. This rule change also adds a provision allowing certified educators in the SoonerStart Early Intervention Program to accrue teaching experience if the services that they provide are substantially equivalent to the educational services that they would provide if employed by a public school.

**Out-of-State Transfer Students OSTP Waiver: OKLA. ADMIN. CODE 210:35-9-31:**

This new provision applies to students who have transferred to an Oklahoma public school from out-of-state after completing their junior year of high school. This rule change authorizes school districts to waive Oklahoma School Testing Program (OSTP) graduation requirements for these students if the school district determines that the student was on track to meet assessment requirements in their previous state. This

provision is in addition to the existing curriculum requirements exception already permitted under this rule.

**Oklahoma Academic Scholar Recognition: OKLA. ADMIN. CODE 210:10-1-16:**

This rule change has been made to reflect that ACT or SAT scores which act as a part of the qualification for recognition can be earned on an ACT or SAT test given on a state-administered test date. The former rule required that the score be earned on a national test administration date. This rule change also removes outdated eligibility requirements.

**Medical Exception to Chronic Absenteeism: OKLA. ADMIN. CODE 210:10-13-24:**

This rule establishes a medical exception to the chronic absenteeism indicator used in calculating the school report cards. Under this regulation, schools may apply for an exemption for qualifying absences of students who meet the rule's criteria for a "significant medical condition." An emergency version of this rule became effective March 28, 2018. This rule change makes the temporary emergency rule a permanent addition to the administrative code.

Starting September 14, 2018, several rule changes to OSDE's administrative rules will be effective. Eleven rule changes were approved by Governor's Declaration on June 18, 2018.

**Recording Student Enrollment and Attendance: OKLA. ADMIN CODE 210:10-1-5:**

This rule change updates the requirements for recording student enrollment and attendance to reflect changes to the student information systems. This rule change removes the specific codes that were originally listed in the rule, instead providing general guidelines on how enrollment/attendance should be recorded. This rule change also changes language to accommodate online instruction and removes an outdated provision that would have required school districts to drop students from the roll upon suspension.

**Terminology Updates**

**OKLA. ADMIN. CODE 210:35-3-31, 61, 66, 67, & 68; 210:-25-27-2:**

This rule change amends six sections of the standards for school accreditation. These amendments change references to "Priority Academic Student Skills" (PASS) to the current "Oklahoma Academic Standards." This rule change also removes obsolete references to the Achieving Classroom Excellence (ACE) Act and End-of-Instruction (EOI) exams.

**OKLA. ADMIN. CODE 210:10-13-2:**

This rule change also removes obsolete references to the Achieving Classroom Excellence (ACE) Act and End-of-Instruction (EOI) exams.

**OKLA. ADMIN. CODE 210:10-13-18:**

This rule changes updates references to *No Child Left Behind* to be consistent with the

*Every Student Succeeds Act* (ESSA). This change also updates the regulations to reflect last year's adoption and approval of the new system of student assessment and school accountability (OKLA. ADMIN. CODE 210:10-13-1.1).

**OKLA. ADMIN. CODE 210:10-13-22 [Revoked]:**

This section has been revoked to reflect last year's adoption and approval of the new system of student assessment and school accountability (OKLA. ADMIN. CODE 210:10-13-1.1)

If your District has any questions about these administrative rule changes, RFR is here to help. Your school attorney can guide you through any questions or concerns your District may have.

**OTRS Contributions for Temporarily Employed Retired Teachers**

*by N. Roxane Mock*

The Oklahoma Teachers' Retirement System ("OTRS") was created by an act of the Oklahoma legislature after citizens amended the state constitution allowing the creation of a public retirement program for educators. Membership in OTRS is available to all public school employees working half-time or more. Teachers and administrators are required to be members and support staff may join voluntarily. Employees of more than 600 local school districts, technology center school districts, and public colleges and universities are enrolled as members of

OTRS. As of June 30, 2016, OTRS had 173,363 members consisting of 90,167 active contributing members, 22,516 members, and 60,680 retired members.

Recently, the OTRS helpdesk issued an email blast containing some instruction as to employer contributions to be made with respect to employing retired members of OTRS. The OTRS helpdesk email provided that the rules and statutes applicable to OTRS do not change with the use of an employment service. The email further stated that postretirement contributions must be paid on all employment of retirees, including temporary employment of retirees. Many school districts and technology centers utilize professional employment service companies to fill positions temporarily. Temporarily filling employment positions via a professional staffing agency is an attractive option for school districts and technology centers in order to avoid a formal employer-employee relationship with temporary employees, and possibly to avoid the obligation of providing employer retirement contributions.

However, Oklahoma Statute title 70, § 17-116.10 provides that an OTRS member shall be considered to be employed by a school district or technology center to perform the duties ordinarily performed by classified or non-classified personnel if the member performs the duties through employment with a proprietorship, partnership, corporation, limited liability company or

partnership, or any other business structure that has agreed or contracted to provide the services to the school district or technology center. Section 17-116.10 further provides that a public school or technology center that employs a retired member shall be required to make contributions to OTRS for the retired member in an amount as required by statute. Section 17-116.10 clearly provides that school districts and technology centers temporarily employing retired members of OTRS via a professional staffing agency must make postretirement contributions to OTRS on behalf of the retiree.

*If you have any questions regarding required employer OTRS contributions, please contact your school district's attorney.*

## Appropriate Designation for a School Psychologist Unlicensed Under the Psychologists Licensing Act

*by Staci L. Roberds*

School districts that employ school psychologists should be aware of a recent opinion issued by the Oklahoma Attorney General regarding the appropriate designation for a psychologist employed by a district who is unlicensed under the Psychologists Licensing Act, OKLA. STAT. tit. 59, §§ 1351-1376 (the "PLA"). The Board of Examiners of Psychologists requested an

opinion from the Attorney General regarding the appropriateness of a cease and desist letter to a “certified school psychologist” employed by a school district who represented himself or herself as a “school psychologist,” when the individual was not licensed to practice psychology pursuant to the PLA.

The PLA specifically states that “[n]o person shall represent himself or herself as a psychologist or engage in the practice of psychology unless the person is licensed pursuant to the provisions of the [PLA].” OKLA. STAT. tit. 59, § 1353. It also explicitly provides that its provisions do not apply to those “[i]ndividuals who have been certified as school psychologists by the State Department of Education.” OKLA. STAT. tit. 59, § 1353(7). Relying directly on the language of the PLA, the Attorney General determined the designation as “school psychologist” violated the PLA, as those psychologists certified as a school psychologist by the State Department of Education are permitted to use the term “certified school psychologist,” and such individuals are “restricted in their practice to employment within those settings under the purview of the State Board of Education.” The Attorney General concluded the proposed action by the

Board of Examiners of Psychologists was appropriate to advance the State’s policy against misleading the public about the credentials of those who provide psychological services and of deterring future violations.

School District officials can review the opinion regarding this issue in its entirety on the Oklahoma Attorney General’s website, <https://www.oag.ok.gov>, referencing Board Supervisory Letters (Op. Att’y Gen. 2018-116A, posted Apr. 13, 2018). If there are questions regarding such designations, a school district should not hesitate to contact its attorney for guidance.

## New Child Abuse Reporting Obligations for School Employees

by Adam S. Breipohl

**are permitted to use the term “certified school psychologist,” and such individuals are “restricted in their practice to employment within those settings under the purview of the State Board of Education.”**

During the 2018 legislative session, the Oklahoma legislature passed two laws that impose new and/or more stringent legal requirements on school employees related to reporting suspected child abuse. School districts must take care to comply with the new rules and ensure that their practices in this area protect students, employees, and the district itself.

House Bill 2259 amends the existing child abuse reporting law found in the Oklahoma Children’s Code, OKLA. STAT. tit. 10A, § 1-2-101. The amended statute now states that “[e]very person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter immediately to the Department of Human Services.” Previously, the statute used the word “promptly” instead of “immediately.” Although not a drastic change to employees’ substantive obligations, this change in the statute’s wording emphasizes the importance of reporting suspected child abuse in a timely manner. HB2259 also adds new language specifically stating that this provision applies to teachers of minor children. Finally, the statute creates a new rule under which teachers of students who are eighteen years of age or older are required to make a report to local law enforcement (as opposed to DHS) immediately if they learn of reason to believe the adult student is a victim of abuse or neglect.

The scope of Section 1-2-101, both before and after its recent amendment, is very broad in that “every person” who has reason to believe child abuse is occurring has a reporting obligation, regardless of

their job, their relationship to the child, etc. However, in another way, Section 1-2-101 is narrower in application than it may appear due to the fact that the term “abuse” is defined for purposes of the statute as “harm or threatened harm to the health, safety, or welfare of a child by a person responsible for the child’s health, safety, or welfare,” so it technically only requires reporting of a crime committed by a child’s parent, guardian, etc. and not by other third parties.

**The amended statute now states that “[e]very person having reason to believe that a child under the age of eighteen (18) years is a victim of abuse or neglect shall report the matter immediately to the DHS.”**

However, the loophole created by the “health, safety or welfare” language in the Oklahoma Children’s Code has been largely closed with respect to school employees by the second child abuse reporting bill passed in 2018, Senate Bill 1150, which creates an entirely new provision in the Oklahoma School Code dealing specifically with the reporting obligations of school employees. That provision, OKLA. STAT. tit. 70, § 1210.163, states in relevant part that “[a] school employee who has reason to believe that a student is a victim of abuse or neglect shall report the matter promptly to the Department of Human Services and to local law enforcement.” However, unlike Section 1-2-101, Section 1210.163 states that for the purposes of the that statute,

“child abuse” that triggers the reporting obligation includes a list of fifteen different categories of crimes against children, ranging from child abuse, to contributing to the delinquency of a minor, to making lewd or indecent proposals to a minor, regardless of the identity of the suspected perpetrator. Finally, it is worth noting that Section 1210.163 specifically requires that employees report child abuse to both DHS *and* to local law enforcement.

Under these two new laws, the scope of school employees’ child abuse reporting

obligations in Oklahoma has significantly increased, and districts must be cognizant of that fact when developing policies, training, etc. related to child abuse. Decisions with regard to how to best address situations of suspected child abuse can also have wide-ranging legal implication for the district itself and individual employees. For these reasons, school districts that have questions about their legal obligations in this area should consider contacting their legal counsel in order to ensure they comply with all applicable requirements imposed by law.

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**ROSENSTEIN FIST & RINGOLD**  
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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.rflaw.com](http://www.rflaw.com) (located on the *Chalkboard* page) to add or change *Chalkboard* e-mail addresses.

# 23rd Annual RFR Fall School Law Update and Golf Tournament



**Date - Wednesday, October 3, 2018**

## 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:** School Law Update Registration Fee – \$50 per person (first-come first-serve)  
Note – This seminar is limited to the first 120 registrants – Please register early

**Where:** **Bailey Golf Ranch, 10105 Larkin Bailey Blvd, Owasso, OK 74055**

**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 golf shirt (men and women's sizes available)

**Deadline to Register – Wednesday, September 26, 2018**

*Please Read Instructions on Page 2*





# 2018 FALL SCHOOL LAW UPDATE AND ROSENSTEIN, FIST & RINGOLD GOLF TOURNAMENT

**2018 Fall School Law Update**  
**PLEASE REGISTER THE FOLLOWING FOR THE SEMINAR AND GOLF:**  
**(PLEASE NOTE – ONLY SCHOOL DISTRICT EMPLOYEES or BOARD MEMBERS ARE ELIGIBLE FOR SEMINAR AND GOLF)**

**Please register:**

Please mark an "X"  
in the appropriate  
box

Seminar and Golf    Seminar only

Name	School District Employed By/Position/Board Member	<input type="checkbox"/>	<input type="checkbox"/>
E-Mail Address (PLEASE PRINT LEGIBLY)			
Name	School District Employed By/Position/Board Member	<input type="checkbox"/>	<input type="checkbox"/>
E-Mail Address (PLEASE PRINT LEGIBLY)			
Name	School District Employed By/Position/Board Member	<input type="checkbox"/>	<input type="checkbox"/>
E-Mail Address (PLEASE PRINT LEGIBLY)			
Name	School District Employed By/Position/Board Member	<input type="checkbox"/>	<input type="checkbox"/>
E-Mail Address (PLEASE PRINT LEGIBLY)			

Method of Payment     Bill School     Check Enclosed    Total: \_\_\_\_\_

### INSTRUCTIONS

If you are requesting to play on a specific team, please list each name and related school district. Please contact each member on your request prior to submitting your registration form and remind them that each golf participant MUST submit a registration form. If you do not list any additional players on your team request, you will be randomly assigned a team and we will not be able to shuffle teams the day of the event.

All registrants will be confirmed via e-mail, so please write legibly.

**Deadline to Register – Wednesday, September 26, 2018**  
**Registration cancellations after September 26 will be charged \$50**

<p><b>Mail, Fax or E-mail this Registration Form to:</b>  <b>Rosenstein, Fist &amp; Ringold</b>  <b>525 S. Main, Suite 700</b>  <b>Tulsa, Oklahoma 74103</b>  <b>Fax: 918-583-5617</b>  <b>E-mail: jimh@rflaw.com</b></p>	<p><b>RFR Contact Info:</b>  <b>Phone: 918-585-9211</b>  <b>For Questions: Contact</b>  <b>Jim Hoffmeister</b>  <b>Email: jimh@rflaw.com</b></p>
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