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The Importance of *Individual* Education Plans for Students

by Cheryl A. Dixon

I have previously written about *Endrew F. v. Douglas County Sch. Dist.*, 580 U.S. ___, 2017 WL 1066260 (March 22, 2017), which was decided by the United States Supreme Court on March 22, 2017, as well as the U.S. Department of Education's Q&A document that was issued to assist school districts in complying with the free appropriate public education (FAPE) standard articulated in *Endrew F.* *Endrew F.* 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.** The Q&A makes clear that under the FAPE standard articulated in *Endrew F.*, each child's educational program must be appropriately ambitious in light of his or her circumstances, and every child should have the chance to meet challenging objectives. The focus

of *Endrew F.*, as well as the Q&A, is on the **individual needs** of each particular student. Thus, IEP teams must develop, monitor, and revise IEPs as necessary to ensure they are appropriately **individualized and ambitious**, and they must set goals that are appropriately ambitious so that all children have the opportunity to meet challenging objectives.

Recently, and in line with standards announced in *Endrew F.* and the Q&A, the U.S. Department of Education's Office of Special Education and Rehabilitative Services ("OSERS") released a conceptual framework that emphasizes support for states' efforts to raise special education expectations. To support this mission, OSERS will provide states flexibility, within the constructs of the IDEA, in implementing their programs

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to raise expectations and improve outcomes for individuals with disabilities.

The framework can be located at [https://www2.ed.gov/about/offices/list/osers/framework/osers-framework-9-20-](https://www2.ed.gov/about/offices/list/osers/framework/osers-framework-9-20-2018.pdf)

[2018.pdf](https://www2.ed.gov/about/offices/list/osers/framework/osers-framework-9-20-2018.pdf).¹ According to OSERS Assistant Secretary, Johnny Collett, this framework will guide OSERS as it carries out its responsibilities and will highlight OSERS' key values and priorities. The framework's focus on flexibility could have the most impact on state and local school systems. The Trump administration has made it a priority to trim unnecessary regulations and policies. OSERS states that it will do the same to give states freedom where the IDEA allows.

In a blog post, Collett stated that OSERS' mission is that "we must rethink special education in America." To "[r]ethink' means everyone questions everything to ensure nothing limits any student from being prepared for what comes next. That begins with acknowledging the unique needs of each child and then finding the best ways to prepare each individual for successful careers and a meaningful life." Johnny W. Collett, Assistant Secretary Office of Special Education and Rehabilitative Services United States Department of Education on September 20, 2018 (available at <https://sites.ed.gov/osers/2018/09/rethinking-special-education/>).

The message is clear – school districts are expected to address each student's individual needs to improve outcomes for their special education population. When drafting an IEP for any special education student, school districts must be looking at the unique, individual needs and strengths of each student. IEPs must be written based on the individual needs of each student and include goals that are ambitious in light of the student's circumstances.

school[s] must offer an IEP reasonably calculated to enable a child to make progress appropriate in light of the child's circumstances.

¹OSERS supports a variety of programs authorized by the IDEA for infants, toddlers, children and youth with disabilities. Importantly, it also monitors state compliance with IDEA rules, among other responsibilities.

Responding to DHS Requests to Interview Students at School

by Adam S. Breipohl

School districts are often faced with situations where employees of the Oklahoma Department of Human Services ("DHS") wish to conduct interviews with a student in connection with an investigation into possible abuse/neglect by the student's parent(s). This article outlines the legal requirements that districts should keep in mind when responding to such requests.

First and most importantly, while there are a number of laws and regulations that can

be relevant to situations involving DHS requests for student interviews, there is no law that specifically requires or permits school districts to notify a parent that DHS has requested to interview their child at school. Nor is there any law that permits district employees or parents to prevent DHS employees from conducting an interview, whether or not the parent objects to the interview or has even been notified of the request.

In fact, when DHS conducts an investigation, it is required to conduct an interview with the child who is the subject of the investigation (i.e. the alleged victim of abuse/neglect), which can occur "at any reasonable time and at any place including, but not limited to, the child's school," and if the school refuses to cooperate, DHS investigators can obtain a court order

mandating that DHS be given access to the child. OKLA. STAT. tit. 10A, § 1-2-105.

The same statute goes on to state that "[DHS] shall notify the person responsible for the health, safety, and welfare of the child that the child **has been interviewed** at a school."

Id. (emphasis added).

However, the use of the past tense in this provision indicates that the notification is to be given after the interview has already occurred.

Similarly, the Oklahoma Parents' Bill of Rights, OKLA. STAT. tit. 25, § 2002, a statute

that prohibits government entities from infringing certain enumerated rights of parents, only requires notification of the parent prior to the student being video or voice recorded, or when it is suspected that a criminal offense has been committed against the child by someone other than the parent, unless the incident has been reported to law enforcement and notification of the parent would impede a law enforcement or DHS investigation. DHS interviews are typically not recorded and usually involve allegations of abuse or neglect on the part of a parent, so these provisions would not pose an obstacle to DHS interviews under most circumstances.

Although there is little to be gained by attempting to push back against a DHS employee's attempt to conduct an interview of an alleged child victim, in

order to head off any argument that school employees did not attempt to keep parents apprised of the situation, districts should consider asking if the DHS employee would be agreeable to the district contacting the child's parent; if the DHS employee is agreeable to doing so, school employees can advise the child's parent of the requested interview (although neither the district nor the parent can ultimately prevent the interview from occurring). If the DHS employee objects to the school notifying

there is no law that specifically requires or permits school districts to notify a parent that DHS has requested to interview their child at school.

the parent (which is much more likely), the best course of action is generally to honor the request not to contact the parent. Either way, district employees should create a written record reflecting the request and DHS's response.

Finally, it is worth noting that the analysis in this article is focused on situations involving requests from DHS to interview an alleged child victim of abuse or neglect. The proper response to a request for an interview of a student may vary based on circumstances such as whether the student is the alleged victim or merely a possible witness, involvement of law enforcement, etc. School Districts that have questions or concerns related to best practices for interviews of students by DHS or other entities should consider contacting their legal counsel.

Child Restraint Systems for School Bus Transportation

by N. Roxane Mock

We have recently received several questions from clients regarding whether school districts are required to utilize child restraint systems while transporting pre-kindergarten students or students that weigh less than fifty (50) pounds. Oklahoma's transportation statutes require

that children under the age of eight (8) years old be restrained by using a child passenger restraint system when transporting such children in a motor vehicle operated on the roadways, streets, or highways of the state of Oklahoma. However, Oklahoma's transportation statutes exempt the driver of a school bus from having to restrain children under the age of eight (8) years old by using a child passenger restraint system.

The U.S. Department of Transportation's National Highway Traffic Safety Association ("NHTSA") recommends that pre-school age children transported in school buses always be transported in properly secured child restraint systems. The NHTSA has also stated that the school bus is the safest vehicle on the road. According to the NHTSA, students are seventy (70) times more likely to get to school safely when taking a bus instead of traveling by car since school buses are one of the most regulated vehicles on the road.

The National Congress on School Transportation ("NCST") is a group comprised of various national transportation safety associations which periodically meet in order to develop recommendations and guidelines for state regulatory authorities and legislative bodies

Oklahoma's statute requiring that child restraint systems be used while transporting young children specifically exempts school bus drivers.

to consider while developing law regulating required school bus safety measures. The NCST is comprised of the following organizations: National Association of State Directors of Pupil Transportation Services; National Association for Pupil Transportation; National School Transportation Association; School Transportation Section of the National Safety Council; and, School Bus Manufacturers Technical Council. The NCST provides its guidance and recommendations to state legislative bodies and regulatory authorities by publishing its National School Transportation Specifications and Procedures ("NSTSP"). The latest NSTSP adopts the NHSTA's recommendation that pre-school age children transported in school buses always be transported in properly secured child restraint systems. However, the NHSTA and NSTSP's recommendations are not regulatory until

they are officially adopted by the appropriate state regulatory authority.

Despite these recommendations that pre-school age children transported in school buses always be transported in properly secured child restraint systems, neither the Oklahoma legislature nor any other applicable Oklahoma regulatory body has adopted any requirement or regulation requiring that pre-school age children be restrained in child restraint systems while transported in Oklahoma school buses. In fact, as stated previously, Oklahoma's statute requiring that child restraint systems be used while transporting young children specifically exempts school bus drivers.

If you have any questions regarding student transportation requirements, 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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