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In this issue:

- 1 The Pitfalls of Temporary Teacher Contracts
- 2 Vapor Products Banned From Educational Facilities and Events
- 4 Directory Information Under FERPA

The Pitfalls of Temporary Teacher Contracts

by Adam S. Breipohl

Temporary teacher contracts can provide school districts with a very useful measure of flexibility in meeting their staffing needs. Unlike the continuing contracts that are required for career teachers, temporary contracts automatically expire at the end of a stated period of time, without any notice or reason for termination being provided to the teacher by the school district pursuant to the usual termination procedures provided under the Teacher Due Process Act of 1990. However, there are also certain legal requirements and best practices in this area which districts should keep in mind to ensure they avoid any possible "traps for the unwary" and are able to reap the benefits of the temporary contract arrangement.

Under Oklahoma law, "[n]o teacher shall be offered a temporary contract with a

school district without a full written disclosure at the time a position is offered by the administration of the school district which sets forth the terms and conditions of the temporary contract." OKLA. STAT. tit. 70, § 6-101.23(G). This provision requires the district's administration to give **written notice** to a prospective employee that his or her employment with the district will be on a temporary basis, to ensure there can be no dispute in the future about whether or not the employee was given notice of that fact. It also specifically requires that disclosure be made **at the time the position is offered**, so that the employee is given fair notice of the terms and conditions of his or her employment before agreeing to work for the district. If a school district fails to comply with this disclosure requirement in any respect, the teacher is deemed to be

employed on a continuing contract basis, depriving the district of the advantages of using a temporary contract.

However, even if the notice requirement is followed to the letter, it is still important that temporary teachers' contracts include adequate language to make it clear that they are temporary contracts, and that the provisions related to the temporary basis of the contract are enforceable. It is not enough that the contract be titled a "temporary teacher contract" instead of a "teacher contract," or that it recite that the employee's job title will be "temporary teacher." Instead, the district's form contract for teachers should be modified to include provisions dealing with issues specific to temporary teachers, such as language stating that the contract will automatically terminate if not renewed by the end of its term and providing that the temporary teacher is not entitled to the due process protections afforded by the Teacher Due Process Act of 1990. Districts should consult with their school attorney to ensure that their temporary teacher contracts have the necessary language to protect the district in the event of situations such as a dispute (or possible litigation) involving a former temporary teacher who is unhappy with the expiration of his or her contract.

Finally, it is important for districts to keep in mind that Oklahoma law generally prohibits school districts from hiring a teacher on a temporary contract for more than a total of

four semesters (whether consecutive or not), unless certain specific conditions are met. However, an important exception to this rule provides that teachers who have previously retired are not subject to the four-semester limitation; for this reason, the best practice for districts who employ retired teachers is often to keep these teachers on temporary contracts.

School districts that have questions regarding their use of temporary teacher contracts or concerns about the adequacy of their form temporary teacher contracts should contact their legal counsel.

Vapor Products Banned From Educational Facilities and Events

by N. Roxane Mock

Oklahoma Governor Kevin Stitt signed Senate Bill 33 on April 15, 2019, banning vapor and vaping products from Oklahoma educational facilities and events via an amendment to the 24/7 Tobacco Free Schools Act. The 24/7 Tobacco Free Schools Act currently requires that schools be tobacco free 24 hours a day, 7 days a week. The Act prohibits the use of tobacco in any form, by anyone, at any place, and at any time while on school grounds and during any school sponsored functions held off campus, including school vehicles and school-sponsored activities. Senate Bill 33 amends the 24/7 Tobacco Free Schools Act to include vaping products. The amendment goes into effect on July 1, 2019.

“Vaping” is the act of inhaling and exhaling the aerosol, often referred to as vapor, which is produced by an e-cigarette or similar device. The term “vaping” is used because e-cigarettes do not produce tobacco smoke, but rather an aerosol, often mistaken for water vapor, that actually consists of fine particles. These particles contain varying amounts of toxic chemicals, which have been linked to cancer, as well as respiratory and heart disease. Many believe that vapors contain no nicotine or less nicotine as compared to traditional cigarettes; however, the primary ingredient in most vapors is nicotine. Vaping devices include e-cigarettes, vape pens, and personalized vaporizers. Many vaping devices include a subtle design, making them easy to hide by students while at school.

Among youth, vaping is more popular than traditional tobacco products. The U.S. Surgeon General reported that in 2018, one in five high school students reported using vaping products in the past month. The U.S. Surgeon General considers vaping products as tobacco products because most of them contain nicotine. Because nicotine is addictive, vaping products are particularly dangerous for youth. Specifically concerning with regard to Oklahoma youth is the statistic that while

Oklahoma’s smoking rates for adults and teens have decreased during the past decade, those rates still remain among the highest in the nation.

The amendment to the 24/7 Tobacco Free Schools Act defines “vapor product” as noncombustible products which may or may not contain nicotine as well as any vapor cartridge or other container that is intended to be used with an e-cigarette, e-cigar, e-cigarillo, e-pipe, or similar product or device. The amendment prohibits the use

of vapor products in or on an education facility that offers early childhood education or in which children in grades K-12 are educated. The amendment also prohibits the use of a vapor product in a school vehicle or at any school-sponsored or school-sanctioned event or activity. Moreover, the

amendment also provides that school districts may adopt more restrictive policies regarding tobacco products and vapor products in addition to the prohibitions contained in the 24/7 Tobacco Free Schools Act. *If you have any questions about implementing or amending a school district tobacco and vapor product free policy, please contact your school district’s attorney.*

These particles contain varying amounts of toxic chemicals, which have been linked to cancer...respiratory and heart disease.

Directory Information Under FERPA

by Haley A. Drusen

Not all information is created equally, especially when it comes to privacy laws and regulations. For school districts, one of the most important privacy laws relates to students: the Family Educational Rights and Privacy Act (FERPA). FERPA both permits parents (or eligible students) to have access to their student's educational records and protects those educational records from certain disclosures without parental (or eligible student) consent.

However, not all information contained in educational records is created (or protected) to the same extent. In particular, FERPA permits Districts to classify certain categories of information regarding students as "directory information" which is entitled to less protection under FERPA than other educational records. FERPA defines "directory information" as information contained in the education records of a student that would not generally be considered harmful or an invasion of privacy if disclosed. These categories of

information include:

- Student's name
- Address
- Telephone listing
- Photograph
- Major field of study
- Dates of Attendance
- Grade level
- Date and place of birth
- Participation in officially recognized activities and sports
- Weight and height of members of athletic teams
- Degrees, honors, and awards received
- The most recent educational agency or institution attended

A District may choose to designate (or exclude) any of the above categories as directory information pursuant to a Board of Education policy.

A District may choose to designate (or exclude) any of the above categories as directory information pursuant to a Board of Education policy.

In addition to adopting a board policy regarding directory information, Districts must distribute a Directory Information Notice to parents and eligible students which defines a time period within which a parent (or eligible student) must notify the school in writing that he or she does not want any or all of the types

of information designated as directory information. This directory information notice should list each category of directory information the District has designated. This notice may be included in student handbooks, enrollment packets, the annual notification of rights under FERPA, or in another publication targeted to District parents and patrons. Once a District has received an "opt-out" request, this designation must remain in effect until it is modified by the written direction of the parent or eligible student.

Once the directory information categories are designated by the District, and appropriate notices are given, the District may disclose directory information to third parties

without specific notice to parents or eligible students, so long as a request to opt-out of directory information disclosures has not been submitted. However, prior to providing information in relation to a request for Directory Information, Districts should be diligent in ensuring that Directory Information notices were appropriately given and opt-out requests were recorded and respected.

If Districts have questions about Directory Information, the associated notices, or FERPA requirements in general, RFR is here to help. Your RFR attorney can guide you through crafting policies and practices that comply with student privacy laws.

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Chalkboard is a Rosenstien, 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 Rosenstien, 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: Rosenstien, 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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