

THE SCHOOL RULE:

Contracts 101: Basic Principles

by David R. Hostetler, Esq.

This article is the second in our “School Rule” series on effective contract practices. The following provides an introduction to some of the basic principles of contract law and drafting. Subsequent columns will address principles and practices regarding contracts for employment, admissions, and professional and support services.

School officials and volunteers sometimes take shortcuts when it comes to decisions and documents, due to the pressures and hurriedness of school operations. Many times when I am called to assist a school with a contract dispute, it soon becomes clear that the existing contract (if there is one), is the cause of the problem, perhaps as much as one-half to two-thirds of the time. Why? Vendors may impose one-sided, confusing, or poorly drafted contracts on unsuspecting schools, school officials or volunteers may copy and adapt legal templates received from friends or from the Internet that seem to meet their needs, no one bothered to carefully read and revise problem provisions, etc. It is important that every school have someone or some group capable of overseeing the school’s contracting practices, and knows how and where to get help when needed. Those involved should understand basic contracting principles of law.

In essence, a contract is an agreed upon understanding between two or more legally capable parties, to perform or not perform some act in exchange for some material benefit.¹ Unless otherwise required by law, contracts can be oral or written, and vary in form and degree of detail, depending on the matter involved and wishes of the parties. For example you can have formal and/or extensively detailed contracts that may require a specific form, or informal contracts that have no required form such as a simple one-page letter or note with basic terms, or even an oral contract.

Below are some basic terms and concepts in traditional contract law.

Contract Formation:

- **Offer:** one party (“offeror”) must extend a sufficiently specific offer to another party to pay for or to provide some good or service, with essential terms included.
- **Acceptance:** the receiving party (“offeree”) must clearly accept the offer extended by the first party.
- **Consideration:** each party must give up something of

value so that there is an exchange of benefits between the parties.

- **Terms of contract:** the terms of the contract are the promises made and obligations assumed by each party to perform their part in fulfilling the contract.
- **Legality:** parties may enter a legal contract for just about any purpose as long as it does not violate any law or public policy prohibiting such contract.

Validity, Execution, etc.

- **Validity:** a valid contract is one that satisfies the formal requirements identified above (basically, valid offer, acceptance, consideration, and legality).
- **Execution:** can refer to the actual finalization in forming the contract (e.g., signatures by the parties) and to the complete fulfillment of all contractual obligations.
- **Void:** when a contract is not enforceable or binding, either at the beginning or later due to some occurrence or non-occurrence.
- **Material breach:** when a party fails to fulfill a substantial obligation (not a minor, inconsequential one) under the contract. This typically relieves the other party of fulfilling its remaining obligations. (This is often where contract disputes arise; parties will disagree on whether a breach has occurred and/or its consequence.) In some cases, the breaching party may have an opportunity to “remedy” a breach after receiving notice from the other party of its existence.

Contract Interpretation

- **Intent:** the primary legal objective in interpreting contracts is to determine the “intent” of the parties. This is done by looking, incrementally, at objective indicators of that intent: first, the expressed meaning of words in a specific provision, the implied meaning of words (if not expressly clear) based on the context of the provision in relation to other provisions, the expressed purposes of the parties (e.g., the “Whereby”) and, sometimes, surrounding circumstances.
- **Plain meaning:** when a contract provision is unambiguous, courts will normally enforce that “plain meaning” and will not consider other factors.

The “School Rule” column is designed to offer legal updates and practical legal recommendations. Mr. Hostetler, legal consultant for ACCS, specializes in education law, is founder and director of Lex-is School Law Services (Chapel Hill, NC), and is an associate professor of education law, policy, and ethics at Appalachian State University (Boone, NC). He may be contacted at hos@Lex-is.com or (919) 308-4652. More information is available at www.Lex-is.com.

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- **Recitals:** some contracts begin with recitals that express the contract's background, as well as the parties purposes and desires, in order to guide interpretation of the specific contractual provisions; i.e., they help establish the "spirit" of the agreement to guide the interpretation of its "letter."
- **Reasonableness and legality:** courts will typically interpret ambiguous provisions to give effect to reasonable, ordinary, and lawful meanings, and will attempt to harmonize provisions (even seemingly contradictory provisions) within the contract as a whole. Industry standards may be an important source of interpretation, as well.
- **Ambiguity:** is resolved in favor of the party with less bargaining power; typically the party that did not draft the contract.
- **Applicable law:** the law of the jurisdiction in which the contract was entered into and where services performed will typically apply. Many contracts expressly address the jurisdictional law. (The law of contracts is generally the same in most states, but each state often has special variants, necessitating such clauses.)
- **Special/negotiated terms:** provisions specially crafted by the parties normally have greater weight in interpretation than general or "boilerplate" terms found in similar contracts. Where special terms are defined, for example, their definitions typically prevail over general, non-defined terms that may seem to conflict.

There are many other terms and circumstances, as well as nuances to the above-listed principles. But knowing the basics and how courts generally interpret contracts helps in contract drafting and analysis. It is best to have an attorney knowledgeable in the subject matter of the contract, who can draft or at least review all school contracts before the school becomes legally bound

NOTES:

1. The terms "contract" and "agreement" are basically synonymous: a legal document may be titled and referred to either as the "Agreement" or the "Contract." You should, however, pick one term and be consistent throughout the document.

Note: This column is for information only and not offered as formal legal advice. Readers are urged to consult a school law attorney to address specific legal questions.

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Point Lookout, Missouri*

*Regents School of Charlottesville
Charlottesville, Virginia*

*Robert T. Walker Leadership Institute
Chicago, Illinois*

*Spearfish Classical Christian School
Spearfish, South Dakota*

*St. Anne's Academy for Girls, Inc.
Gainesville, Virginia*

Affiliate Homeschools

*Classical Christian Cottage Academy
Euless, Texas*

*Pfohl Homeschool Family
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