

# THE SCHOOL RULE:

## Contracts 101: Enrollment Contracts

by David R. Hostetler, Esq.

*This article aptly concludes our five-part School Rule series on effective contract practices. Prior articles have addressed effective practices, generally (November 2011), legal principles of contract law (January 2012), standard (“boilerplate”) clauses (March 2012), and employment contracts and pitfalls (May, 2012, see also March 2011).*

Enrollment contracts are, in some ways, similar to other types of school contracts: they contain a combination of standard “boilerplate” clauses as well as distinctive ones suited to the contract’s specific purpose; they involve apportioning risks and responsibilities; and they must follow similar guidelines to be effective (clarity, consistency, enforceability, etc.)

Clauses that are distinct and commonly used in enrollment contracts address the following:

- **Tuition and payment:** addressing the costs, options, and process of paying tuition, as well as consequences for nonpayment or late payment.
- **Withdrawal:** addressing grounds for voluntarily withdrawal or involuntary dismissal, and the parties’ obligations arising therefrom.
- **Conduct and compliance:** addressing the grounds for involuntary dismissal for student (and sometimes parent) misconduct or other failure to comply with school requirements. Typically such provisions bind the student and parents to comply with existing school policies and procedures.
- **Indemnification:** addressing the parents’ responsibility for damages caused by student behavior or misbehavior or by parental noncompliance.

Other clauses that may also be included might address the following:

- Requirement and proof of student health insurance coverage.
- Immunization and medical certifications.
- Damages in case of early withdrawal, including attorney fees and related costs of pursuing legal remedies.
- Grievance, arbitration, or mediation requirements (binding or non-binding), to eliminate or delay formal litigation.

- The withholding of student records in case of outstanding fees owed. (State law may prohibit this.)
- Waiver of liability provisions, including general waiver of liability except for willful misconduct or gross negligence, or for injury arising from field trips, athletics, and other circumstances. (Such clauses are sometimes unenforceable, especially waiver clauses that fail to adequately inform of specific risks.)

Of course all of the above provisions are subject to special laws and regulations of the jurisdiction in which the school exists, as well as each school’s special needs.

Practice points include the following:

- Establish a clear and organized procedure for annual review, revision, distribution and collection of contracts.
- Update contracts, as needed, based on revised and new school policies, objectives, and circumstances.
- Strike an effective balance so that contracts are sufficiently comprehensive but not too lengthy, complicated, or difficult to understand or follow.
- Ensure proper means and communications are in place to enable school staff administering and handling the contracts, as well as parents, to understand the enrollment process and substantive (non-boilerplate) contract terms. For staff, they should know their role in handling the contracts and how to respond to questions that may arise (e.g., to whom should questions be referred.)
- Involve legal counsel in drafting and reviewing the enrollment contract. Similarly, counsel should be involved reasonably early when a contract question, problem, or potential problem arises. Oftentimes simple steps, if properly informed and taken, can reduce or eliminate costly and time-consuming contract disputes.

Finally, to conclude this article, this series, and this year, it seems fitting to lift our thoughts higher above mundane contracting practices. Let us rejoice in our Savior’s entry into our dark world to conquer sin and save those whom He has called to faith and life in the Lord. We thereby hope in that great day when He ushers in the peaceable and eternal kingdom of God, in which the lamb lies down with the lion, there shall be no more tears, and lawyers will be out of work (at least as we know it in this life).

*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](mailto:hos@Lex-is.com) or (919) 308-4652. More information is available at [www.Lex-is.com](http://www.Lex-is.com).*