

THE SCHOOL RULE

School Employment Contracts: Avoiding Costly Mistakes

by David R. Hostetler, Esq.

Spring brings the onset of teacher contract decisions and offers; the following should interest those of you involved in the process.

Phaedra Shively taught French at the Santa Fe Prep School for six years. Her annual contract contained a clause that stated,

The School may refuse to reemploy the teacher without cause, and this contract shall not give rise to any entitlement to or expectation of reemployment.

At contract renewal time, prior to Phaedra's seventh year, the school sent out contracts with the above language. This time, Phaedra penned her own "amendment" to that clause stating,

I agree with all of the last paragraph except the last sentence. I deserve and expect just cause for nonrenewal of continuation of my teaching.

She returned the contract, received no response from the school, and taught French the next year of school. At the end of that year the school did not renew Phaedra's position. She sued, contending that she "amended" the contract and, consequently, it required "just cause" to nonrenew her position. That is, her amendment transformed the contract from an "at will" to "just cause" arrangement. This meant that she could be dismissed or nonrenewed only for reasons of inadequate performance or improper conduct, for which there was no proof.

A federal magistrate judge and, on appeal, the United States 10th Circuit Court agreed. Applying principles of state contract law, the court ruled that Phaedra's written amendment was a "counter-offer" to the school's original contract. Because of how long Phaedra had been at the school, the fact that the school did not challenge the amended contract, and

because it employed Phaedra for the following year, it therefore impliedly "accepted" Phaedra's counteroffer. The result: Phaedra was indefinitely employed and could only be nonrenewed or dismissed for "just cause." In addition, the magistrate judge awarded Phaedra \$60,000 in damages (subject to further review).

Practice Points:

- It is easy for poorly drafted and/or administered employment contracts to lead to complications and legal liability. In this instance, no one apparently reviewed or raised concerns about Phaedra's written amendment.
- School officials responsible for contracts should understand basic contract law, particularly the distinctions between "at will" and "just cause" employment status. Misstated or misplaced words or phrases in an employment contract or letter can easily transform an employee's legal status and job protections.
- Avoid using "boilerplate" and "copy-paste" contracts; i.e., those with text borrowed from other "sample" contracts or templates. The law varies from state to state, and varied circumstances often require different terms and nuances.
- School officials, or preferably a school law attorney, should periodically review all school employment contracts, policies, and procedures (e.g., every 3 years or as needed).

Note: This column is for legal information only; it should not be relied upon as formal legal advice. Readers are urged to contact a school law attorney to address specific legal questions.

This article is the first in a new series of "School Rule" columns, designed to offer legal updates and practical legal recommendations. The author is ACCS's appointed Legal Consultant. Mr. Hostetler 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 in Boone, NC. His four children are or have been students at Trinity School (Durham, NC) and the McCallie School (Chattanooga, TN). He may be contacted at hos@Lex-is.com or (919) 308-4652.