

The Law of Contracts: What Constitutes a Contract?

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ABSTRACT

Contracts between school districts and its personnel must not only satisfy the requirements of general contract law, but also must meet the requirements specified in state law and administrative regulations. A contract may be defined as an agreement between two or more competent parties for legal consideration on a legal subject matter in the form required by law. This definition includes five legal principles governing every valid contract: offer and acceptance, competent parties, consideration, legal subject matter, and proper form

The public schools employ several categories of professional personnel, including superintendents, principals, teachers, curriculum specialists, business managers, school psychologists, social workers, diagnosticians, counselors, and the like. To be eligible for employment in a professional position, the individual should possess a valid license or certificate issued according to statutory provisions of a given state.

A certificate renders the holder eligible for employment in a state; it does not guarantee employment. Statutory law provides that local boards of education have the legal authority to enter into contracts with professional personnel. The relationship between a school board and its professional employees is contractual. The general legal principles governing contracts—offer and acceptance, competent parties, consideration, legal subject matter, and proper form—apply to this contractual relationship (Alexander & Alexander, 2011).

Offer and Acceptance

Every valid contract contains an offer and acceptance. For example, a board of education offers a high school teaching position in a particular school to an individual teacher. There is no contract unless and until the individual accepts the offer. Furthermore, an offer can be accepted only by the individual to whom it is made.

Moreover, unless otherwise stated, an offer must be accepted within a reasonable time after it is made, or the offer will be terminated automatically.

Offer and acceptance pertains to the job description, compensation level, and time of performance to which both parties have agreed. In most states, because only the board of education has the power to employ personnel, it must exercise that function itself. It cannot delegate the employment duty to the superintendent of schools or to individual members of the school board (*Branch v. Greene County Board of Education*, 1988; *Brown v. Caldwell School District No. 132*, 1995; *McCormick v. Lake Washington School District*, 2000). Furthermore, a local board of education is considered to be a legal body only as a corporate unit. Therefore, for a board of education to enter into a valid contract with a teacher or other personnel there must be a meeting of the board (*Big Sandy School District N. 100-J v. Carroll*, 1967; *Board of Education of D.C. v. Wilson*, 1972).

Competent Parties

Competent parties means that for a valid contract to exist, the parties must be authorized by law to enter into a contractual relationship. By law the school board possesses the legal authority to enter into contracts. However, there are certain classes of people who have limited capacity to contract. These include minors, insane persons, inebriated persons, and corporations.

A teacher or other professional employee is legally competent to contract providing she possesses the necessary certification and meets other state requirements. An application of this element of contracts is found in several cases. Teachers either lacked a certificate when they began teaching or were ineligible for one because they were under the state's minimum-age requirement for certification. Consequently, the contract between the parties was void, and the teachers were not entitled to receive a salary for the work they performed while a minor (*Floyd County Board of Education v. Slone*, 1957; *Nunez v. Simms*, 2003; *Springer v. Bullitt County Board of Education*, 2006).

Consideration

Consideration pertains to the promises bargained for and exchanged between the parties. Consideration is something of value—usually money or the equivalent. Promises to perform services gratuitously are not contracts because they are not supported by consideration. To have valid consideration, each party must give up something of value. In the case of an employment contract, consideration consists of the exchange of promises between the employee and the school district. The employee promises to perform specified services, and the school board promises to pay a specified salary. Teachers' monetary compensation is established in the salary schedule adopted by the board of education or negotiated between the board of education and the teachers' union

(*Davis v. Greenwood School District*, 2005; *Sherwood National Education Association v. Sherwood-Cass R-VIII School District*, 2005).

Legal Subject Matter

Legal subject matter refers to mutual assurance between the parties that the job and its performance would not be a violation of the law. For example, most states prohibit holding various types of assemblies, such as cock fighting. If a school board were to enter into a contract to lease school property for the purpose of conducting a cock-fighting event, such a contract would not pass the legal subject matter standard of a valid contract and would be declared null and void (Alexander & Alexander, 2011).

Proper Form

Finally, *proper form* means that all legal requirements, as stipulated in the state's statutes, must be followed in order for a contract to be valid. The precise form for contracts may vary from one state to another, but in most states, the statute requires that contracts with professional personnel be written (*Board of Education v. Jones*, 1992; *Bradley v. W. Sioux Community School Board of Education*, 1994; *Jones v. Houston Independent School District*, 1992). In some states, the failure to issue a notice of nonrenewal automatically constitutes an offer of employment for the subsequent year (*Enstad v. N. Central of Barnes Public School District No. 65* (1978)).

The policies and procedures of the local board of education, provisions of the state constitution and its statutes, and the collective bargaining agreement, if there is one, are considered part of the contract between the school district and the teacher or other professional employee. It is recommended, therefore, that the aforementioned inclusions to an employee's contract be referenced either in the body or on the face of the contract; they then become expressly part of the individual employment contract.

Conclusion

Contracts between school districts and its personnel must not only satisfy the requirements of general contract law, but also must meet the requirements specified in state law and administrative regulations. A contract may be defined as an agreement between two or more competent parties for legal consideration on a legal subject matter in the form required by law. This definition includes five legal principles governing every valid contract: offer and acceptance, competent parties, consideration, legal subject matter, and proper form.

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