

## Service Associate Q&A

School attorneys Shana Lewis and Tony Renning address “liquidated damages” provisions

**Q.** *What is an important issue that has come up for your school district clients in the last six months?*

**A.** We have been fielding many questions about the enforcement and interpretation of “liquidated damages” provisions contained in the individual teaching contracts utilized by many school districts. A liquidated damages provision typically requires the teacher to pay a pre-determined amount to the school district when the teacher resigns or requests that the school district release him/her from their individual teaching contract before the term of the contract has expired.

**Q.** *What do you advise, in general, as to the enforcement and interpretation of “liquidated damages” provisions?*

**A.** A liquidated damages provision must be in the individual teaching contract in order to be enforceable. Indeed, a court may refuse to enforce the provision if it is contained solely within a policy or handbook.

In order to be enforceable, the provision must not be a penalty, but rather, be reasonably designed to compensate the school district for the damages arising from early termination, such as the cost of replacing the teacher in the short term and long term. A liquidated damages provision where the amount owed increases as the first day of school nears is reasonable because it typically requires additional effort to replace a teacher when the school year begins.

Attorneys debate whether a school district may refuse to release a teacher from his/her contract when the teacher submits his/her resignation. While there is no Wisconsin court case explicitly addressing this

issue, we do not believe that a school district may refuse to accept a teacher’s resignation, thereby preventing the teacher from resigning and effectively requiring the teacher to continue to work for the school district after expressing a desire to terminate the contract.

However, a school district may collect reasonable liquidated damages and may pursue additional actual damages when the liquidated damages are not sufficient to compensate the school district for the harm caused by the teacher’s resignation. In order to preserve the school district’s right to pursue actual damages, the language of the provision should include explicit language explaining that the school district is permitted to pursue actual damages against the teacher in addition to, or instead of, the amount identified in the contract as liquidated damages.

When a teacher resigns to accept a position in another school district, the school district losing the teacher may seek to bring a claim against the school district hiring the teacher. Depending upon the facts and circumstances involved, one such claim may be for tortious interference with a contract and will likely rely upon Wis. Stat. § 118.22(2), which provides: “No such board may enter into a contract of employment with a teacher for any period of time as to which the teacher is then under a contract of employment with another board.”

School district officials must remember that they will inevitably be on both sides of this issue. Sometimes, the school district is dealing with a teacher resigning from employment, such that the school



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district is seeking to enforce the liquidated damages provision against the teacher. In other cases, the school district is seeking to hire a teacher who must resign from employment with another school district in order to commence work in the new school district. Therefore, it is important for school district officials to be consistent in their interpretation and application of these provisions.

**Q.** *What issue(s) do you think school boards should be paying attention to in the next six months?*

**A.** School boards should be paying attention to open enrollment policies, including but not limited to, the changes made to open enrollment for special education students; administrator contract renewal and non-renewal deadlines; and anticipated developments regarding the rights of transgender students in the school district environment. ■

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